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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16801

In the Matter of

BENNETT GROUP FINANCIAL SERVICES, LLC and DAWN J. BENNETT,

Respondents.

Division of Enforcement's Opposition to Respondents' Motion to Stay Sanctions

Respondents Bennett Group Financial Services, LLC and Dawn J. Bennett seek a stay of the Commission's March 30, 2017 Order Imposing Remedial Sanctions, Securities Act Rel. No. 10331, pending judicial review. Mot. 1. The Commission's consideration of stay requests is "governed by the traditional, four-factor standard—namely, (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Raymond J. Lucia Companies Inc. and Raymond J. Lucia, Sr.*, Exchange Act Release No. 76241, at 1 (Oct. 22, 2015) (quotation omitted). As the parties seeking relief, Respondents carry "the burden of demonstrating that a stay is justified." *Id.* "[T]he first two factors are the most critical," and thus "an applicant's failure to demonstrate the requisite likelihood of success or irreparable harm ordinarily will be dispositive of the stay inquiry." *Id.* at 1-2. Because Respondents fall short of meeting *any* of the four factors, their stay request should be denied.

Respondents have not demonstrated that they are likely to succeed in their Appointments Clause argument—the only issue on which they claim to have any likelihood of success.[1] Respondents rely on the fact that "the only circuit court that currently has an opinion in effect on this issue" held that the Commission's ALJs are inferior officers subject to the Appointments Clause. Mot. 2 (citing *SEC v. Bandimere*, 844 F.3d 1168 (10th Cir. 2016)). But a single decision by a divided panel in one circuit does not establish that Respondents are more likely than not to prevail on appeal in this case, particularly given that the three judges on the only other circuit case to have addressed the issue ruled unanimously for the Commission. *See Raymond J. Lucia Cos. v. SEC*, 832 F.3d 277 (D.C. Cir. 2016).[2] Although that opinion was vacated when the D.C. Circuit granted rehearing en banc, the decision to rehear a case en banc sheds no light on the Court's view of the merits of the panel's holding. *See* Fed. R. App. P. 35(a) (establishing two criteria for granting rehearing en banc—when "necessary to secure or maintain uniformity of the court's decisions" or "the proceeding involves a question of exceptional importance").

In any event, the Commission filed a petition for rehearing en banc in *Bandimere*, the Tenth Circuit called for a response, and the en banc petition is currently pending before the court. And, as noted, the D.C. Circuit is also set to consider, en banc, an Appointments Clause challenge to the Commission's ALJs. *Raymond J. Lucia Cos. v. SEC* (No. 15-1345) (en banc oral argument scheduled for May 24, 2017). Considering the current posture of these cases, Respondents have demonstrated—at best—that their Appointments Clause argument is an open

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1 Respondents do not argue that the Commission erred in its finding that Respondents' "egregious," "recurrent" misconduct violated the federal securities laws, or that the Commission erred in its choice of sanctions. March 30, 2017 Order, *supra*, at 4-9.

2 As the Commission observed, Respondents may appeal to the D.C. Circuit or the Fourth Circuit, not the Tenth Circuit. March 30, 2017 Order, *supra*, at 10 n.50.

legal question. That showing might be enough to obtain a stay if the remaining factors weighed "strongly" in Respondents' favor. *Aamer v. Obama*, 742 F.3d 1023, 1043 (D.C. Cir. 2014). *But see Real Truth About Obama v. FEC*, 575 F.3d 342, 347 (4th Cir. 2009) (rejecting sliding-scale approach and holding that movant must "clearly demonstrate that it will *likely succeed* on the merits"). But they do not.

Respondents have failed to demonstrate irreparable harm. It is well established that "economic loss does not, in and of itself, constitute irreparable harm." *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Indeed, Respondents acknowledge that "the Commission 'has consistently found that the kinds of harms [that they assert]—*e.g.*, financial detriment, the loss of employment prospects, and the potential for collateral proceedings initiated by third parties—do not amount to irreparable injury.'" Mot. 4 (quoting *Mohammed Riad and Kevin Timothy Swanson*, Advisers Act Release No. 4446, at 3 (July 8, 2016)). Respondents argue (Mot. 4) that these economic losses, even if not irreparable, nonetheless warrant a stay in cases like this "where the law is at least open to scrutiny." But failure to establish irreparable harm is fatal to a stay request. *Lucia*, *supra*, at 1-2; *Wis. Gas Co.*, 758 F.2d at 674; *Real Truth About Obama*, 575 F.3d at 347. Raising an unresolved legal question does not substitute for irreparable harm; on the contrary, having fallen short of demonstrating they are likely to prevail, Respondents must make an even more compelling showing of irreparable harm than would otherwise be necessary. *See Riad*, *supra*, at 3; *Sherley v. Sebelius*, 644 F.3d 388, 398 (D.C. Cir. 2011).

Respondents also contend (Mot. 4) that enforcement of the Commission's sanctions will "limit Ms. Bennett's ability to secure lenders and partners" for her private online retail startup, but they do not explain why *this* economic loss would amount to irreparable injury. "If

Respondents ultimately prevail, there is every reason to believe that [potential lenders and partners] will take note accordingly." *Riad, supra*, at 3-4; *see also Richard L. Sacks*, Exchange Act Release No. 57028, at 4 (Dec. 21, 2007) ("[Sacks] does not explain why his business could not resume after review if the rule is set aside."). Respondents have likewise failed to demonstrate that this alleged injury "will directly result from" enforcement of the sanctions they seek to enjoin, *Wis. Gas Co.*, 758 F.2d at 674, rather than from, for example, the fact that prospective lenders and partners may be aware that Ms. Bennett has been found liable for perpetrating an elaborate fraud against clients and potential clients. March 30, 2017 Order, *supra*, at 8. And because a stay pending appeal would only postpone the threat of sanctions, it would not eliminate the "concern over her ability to fulfill repayment obligations" that is purportedly damaging Ms. Bennett's "fundraising efforts" (Mot. 4-5).

Nor can Respondents show that no other party would be likely to suffer substantial harm if the stay were granted. Respondents urge that Ms. Bennett cannot harm the investing public because she "has left both her positions at Bennett Group Financial Services and the securities industry." Mot. 5. But the Commission has already rejected the argument that Ms. Bennett poses no future threat. As the Commission found, "barring Bennett is in the public interest" given "the egregious and recurrent nature" of her misconduct, "the high degree of scienter displayed," "the absence of meaningful assurances against future misconduct," and Respondents' "calculated attempts to conceal their misconduct." March 30, 2017 Order, *supra*, at 8. While Ms. Bennett may have left the securities industry, "absent a bar there is nothing to prevent [her] from coming out of retirement and participating in the industry" again. *Donald L. Koch and Koch Asset Mgmt., LLC*, Exchange Act Release No. 72443, at 4 (June 20, 2014) (quotation omitted).

Finally, Respondents have not demonstrated that a stay of the Commission's sanctions is in the public interest. The Commission found that Ms. Bennett "is unfit to serve the investing public and should be barred." March 30, 2017 Order, *supra*, at 8. For the same reasons, the Commission determined that a cease-and-desist order was appropriate. *Id.* at 9. The Commission also found that "the public interest requires stringent [civil] penalties" because the violations "involve[d] fraud or deceit and resulted in significant risk of substantial loss to others or a substantial pecuniary gain to [Respondents]." *Id.*

Respondents do not argue that the Commission erred in its determination that they engaged in "fraudulent misconduct" that "spanned more than a year and involved repeated, knowing misstatements," acted with a "high degree of scienter," tried "to obstruct Commission staff's examination and investigation by providing false information," and offered no "meaningful assurances against future misconduct." Their argument (Mot. 5) that the public interest nonetheless favors a stay because they challenge the constitutionality of the initial adjudicator in the Commission's administrative process fails. That Respondents attack only the *forum* in which the undisputed and overwhelming evidence supporting the Commission's findings against them was presented speaks to the diminished public interest in a stay. The presence of a plausible constitutional claim, even one of "national importance" (Mot. 5), does not salvage a plainly inadequate stay application.

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"[T]he imposition of a stay pending judicial review of an action by an administrative agency," the Commission has explained, "is an *extraordinary* remedy." *Sacks*, *supra*, at 3 (emphasis added). Respondents have failed to carry their burden of demonstrating that a stay is warranted—indeed, they cannot satisfy *any* of the four factors. Accordingly, their request for that extraordinary relief should be denied.

This 26th day of April, 2017.

Respectfully submitted,

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STATEMENT OF FILING BY FACSIMILE AND OVERNIGHT COURIER

I hereby certify that, on this twenty-sixth day of April, 2017, with respect to In the Matter of Bennett Group Financial Services, LLC and Dawn J. Bennett, Administrative Proceeding File No. 3-16801, I caused a true and correct copy of the Division of Enforcement's Opposition to Respondents' Motion to Stay Sanctions to be filed via facsimile and overnight courier with the Office of the Secretary of the U.S. Securities and Exchange Commission pursuant to Commission Rule of Practice 151, 17 C.F.R. § 201.151, at the following address:

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CERTIFICATE OF SERVICE

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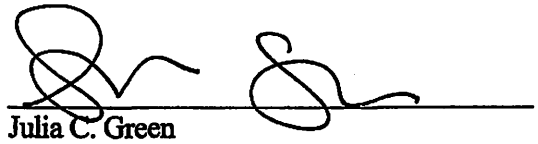

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