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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

BIOELECTRONICS CORPORATION,
IBEX, LLC,
ST. JOHN'S, LLC,
ANDREW J. WHELAN,
KELLY A. WHELAN, AND
ROBERT P. BEDWELL,

Respondents.

ADMINISTRATIVE PROCEEDING

File No. 3-17104

RESPONDENTS' AMENDED[1] PETITION FOR REVIEW OF THE INITIAL DECISION

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ANDREW J. WHELAN, and
KELLY A. WHELAN

[1] Respondents timely filed a motion to correct the Initial Decision, which was denied on January 13, 2017. Respondents' 30-page Petition was timely filed on February 2, 2017. This Amended Petition was filed in response to the Secretary's February 22, 2017 telephonic request that Respondents comply with the 3-page limit set forth in Rule 410(c). Respondents request that the Commission accept the original Petition, as it more comprehensively describes the reasons that the Petition should be granted. In the alternative, Respondents respectfully submit this Amended Petition in its place.

Respondents, BioElectronics Corporation ("BIEL"), Ibex, LLC, St. John's, LLC, Andrew J. Whelan and Kelly A. Whelan (collectively, "Respondents") submit this amended petition to the Commission for review of the Initial Decision issued by Administrative Law Judge Cameron Elliot ("ALJ Elliot") dated December 13, 2016 (the "Initial Decision"). The standards for granting review by petition under Rule 411(b)(2) are satisfied as follows:

A. Prejudicial Errors were Committed in the Conduct of the Proceeding as follows:

1. ALJ Elliot was not Constitutionally appointed.[1]

2. ALJ Elliot excluded evidence of A. Whelan's character. RT, pp. 1194, 1256.

3. The award exceeds five-year statute of limitations (28 USC §2462).[2]

4. The Respondents cannot repay the proposed disgorgement or penalties.[3]

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[1] ALJ Elliot was not properly appointed under the Appointments Clause of the United States Constitution. *Bandimere v. United States Securities and Exchange Commission*, AP# 15-9586, 844 F.3d 1168 (10th Cir. December 27, 2016), citing *Freytag v. Commissioner of Internal Revenue*, 501 U.S. 868 (1991)). Until recently, there had been a split in the Circuit Court of Appeals on this issue. See *Raymond J. Lucia Cos., Inc. v. SEC*, 832 F.3d 277 (D.C. Cir. 2016). Importantly, the DC Circuit Court's decision was recently vacated and is set to be reheard *en banc*, *Raymond J. Lucia Cos. v. SEC*, 2017 U.S. App. LEXIS 2732 (D.C. Cir. Feb. 16, 2017). Violations of the Appointments Clause constitute a structural error requiring automatic reversal of the Initial Decision. See *Bandimere* at footnote 31.

[2] A 5-year statute of limitations applies to the Division's claims against the Respondents because disgorgement orders, including this one, are punitive. See *28 U.S.C. § 2462.* See, *SEC v. Graham*, 823 F.3d 1357 (11th Cir. Fla. 2016). The SEC argued--successfully--that disgorgement orders fit within the bankruptcy discharge exception at 11 U.S.C. § 523(a)(7). See *In re Telsey*, 144 B.R. 563 (Bankr. S.D. Fla. 1992). The SEC thereby concedes and is judicially and equitably estopped to argue that disgorgement is not a punitive remedy. On January 13, 2017, the Supreme Court granted certiorari in *Kokesh v. Securities and Exchange Commission* (U.S. Jan. 13, 2017) (No. 16-529) to take up the issue. The computation of profits to be disgorged should not exceed profits on transactions completed within the 5-year statute of limitations (April 17, 2010-February 5, 2016), the total profits from which are only $462,532. See RX 1A; and Post-Hearing Declaration of Brian Flood, Exhibit 1.

[3] The Initial Decision at pages 1-2 summarizes that ALJ Elliot: "(1) finds that these five Respondents violated Section 5 of the Securities Act of 1933; (2) finds that BIEL violated Section 13 of the Securities Exchange Act of 1934, that BIEL and A. Whelan violated Rules thereunder, and that A. Whelan caused some of BIEL's violations; (3) orders Respondents to cease and desist from committing and causing any violations; (4) orders Respondents to disgorge a total of approximately $1,820,000 in ill-gotten gains, plus prejudgment interest; (5) permanently bars A. Whelan and K.

5. ALJ Elliot's third tier penalties, cease and desist order and penny stock bar are not supported by a preponderance of evidence, or even the non-scienter based claims in the OIP.[4]

6. ALJ Elliot refused to consider expert reports or permit testimony of three of Respondents' experts. Initial Decision, p. 31, § II.G.3; BioElectronics Corp., Admin. Proc. Rulings Release No. 4127, 2016 SEC LEXIS 3340 (ALJ Sept. 6, 2016); RX 201, 202 and 205.

B. The Commission Should Review the Decision Because it Embodies:

1. findings or conclusions of material fact that were clearly erroneous, including:

   a. That Kelly Whelan and IBEX had control over Andrew Whelan and BIEL or that IBEX and BIEL were jointly controlled.

   b. That BIEL's formal withdrawal from registration in 2007 was ineffective under Section 12(g) of the Securities Act; and

   c. That the disgorgement awards proposed by ALJ Elliot exceed gains on securities transactions made within the five-year statute of limitations.

2. the following conclusions of law were erroneous:

Whelan from participating in offerings of penny stock; and (6) imposes civil penalties of $650,000 against St. John's and $130,000 against A. Whelan." The individual investor Respondents cannot disgorge what has been reinvested into BIEL and spent by BIEL. The Commission should eliminate the civil penalties awarded in the Initial Decision, in their entirety, and reduce substantially the disgorgement amount, because such awards are grossly excessive and violate U.S. Constitution, Article 8 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment.")

[4] The OIP alleges neither fraud nor an intent to defraud, typical predicates to third tier sanctions. The OIP, at most, asserts that A. Whelan and K. Whelan willfully violated Sections 5 and 13, neither of which require a showing of scienter. See OIP 8, 41, 42. Because there was insufficient notice in the OIP, the proposed award exceeds the bounds of Due Process. ALJ Elliott ignored evidence, struck evidence and otherwise refused to consider evidence of reliance on counsel. RT 913-922. See *Howard v. SEC,* 376 F.3d 1136, 1148, n. 20 (D.C. Cir. 2004). ALJ Elliot struck the reliance on counsel defense even after recognizing that the mountain of legal opinion letters surrounding the securities transactions in this case may negate scienter. Initial Decision, pp. 4, 11; RT, p. 25, ln 8. See legal opinion letters at RX 39, 41, 43, 45, 69, 71, 74, 76, 78, 80, 81, 82, 85, 87, 88, 89, 91, 94, 98, 101, 103, 105, 108, 110, 113, 114A, 115, 119, 123, 127, 128, 129, 131, 133, 134, 136, 138, 139, 141, 142, 144, 145, 147, 148, 149, 151, 154, 155, 157, 158, 160, 162, 166, 167, 172G, 192. See also RT 417 [K. Whelan testified: "I rely on the opinions of my attorneys."] ALJ Elliot contended that the advice of counsel defenses is difficult to establish – so much so that "I HAVE NEVER FOUND ADVICE OF COUNSEL." RT 922. The Division's counsel argued that advice of counsel was irrelevant because they were not asserting scienter as to any of its violations (clearly even the Division did not contemplate second or third tier penalties would be proposed by ALJ Elliot's Initial Decision). RT 920.

a. that ALJ Elliott was properly appointed under the Appointments Clause of the US Constitution;

b. that Respondents violated Section 5 on the incorrect basis that (1) St. John's failure to file its Form 144 timely, and thus non-compliance with Rule 144, prevented St. John's transactions from being exempt under Section 4(a) (essentially making Rule 144 an exclusive basis for the exemption); and (2) IBEX was an affiliate of BIEL (which it was not).

c. That disgorgement relief reaches back forever, without reference to the five-year statute of limitations;

d. That BIEL's 2006 and 2007 withdrawals from registration, whose registration was not mandatory at that time, was ineffective under Section 12(g) of the Securities Act. RX 189, RX 190. The reporting requirements upon which the OIP is based arise under Section 13(a) and apply only to issuers with a class of securities registered under Section 12. 15 USC §78m. BioElectronics never had a class of securities registered under Section 12, and owed no such reporting obligations.

3. This case implicates several important legal issues and issues pertaining to the proper exercise of discretion and application of law or policy that are important and that the Commission should review, including

a. Whether the proceedings conducted by ALJ Elliot violated the Appointments Clause of the United States Constitution (Art. 2, Sec. 2, Cl. 2) (discussed above)?

b. Whether the disgorgement award should extend to profits on transactions outside the 5-year statute of limitations?

c. Whether St. John's satisfied the Section 4(a)(1) exemption even though it did not technically comply with Rule 144?

d. Whether IBEX should be treated as a control person of BIEL, even though it never had the right to exercise that control, and never did exercise any control?

e. Whether Rule 144 is not a "safe harbor" because it includes silent restrictions on the number of times it can be used by a single investor reinvesting in a single issuer?

f. Whether an investor's reinvestment of the proceeds of a valid Rule 144 exempt sale transaction in the same issuer jeopardizes the exemption?

g. Whether ALJ Elliot's imposition of new silent restrictions on IBEX's use of Rule 144 transactions to reinvest in BIEL runs afoul of the legislative intent and the evolution of Section 4 and Rule 144, which have been expanded to encourage lawful investments in unregistered securities for purposes of job creation, tax realization and other economic benefits in the United States?

h. Whether BIEL's 2006 and 2007 formal withdrawals from registration, whose registration was not mandatory at that time, were effective under Section 12(g) of the Securities Act?

i. Whether testimony of a Respondent's character cannot be offered by a fact witness or an expert witness, as ALJ Elliot ruled?

j. Whether third tier penalties and/or a penny stock bar should be awarded in a proceeding commenced by an OIP based entirely on non-scienter violations?

For each and all of the foregoing reasons, the Petition should be granted.

Dated: Santa Monica, California
February 24, 2016

Respectfully submitted,
CORRIGAN & MORRIS, LLP

By: _____

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PROOF OF SERVICE

I hereby certify that on February 24, 2017, I caused to be served a true and correct copy of the following document on the date and in the manner indicated below.

RESPONDENTS' AMENDED PETITION FOR REVIEW OF THE INITIAL DECISION

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