

**UNITED STATES OF AMERICA**  
Before the  
**SECURITIES AND EXCHANGE COMMISSION**

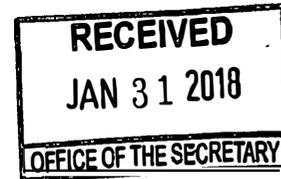
**ADMINISTRATIVE PROCEEDING**

**File No. 3-18346**

In the Matter of

**CYNTHIA HOLDER, CPA,  
JEFFREY WADA, CPA,  
DAVID MIDDENDORF, CPA,  
THOMAS WHITTLE, CPA, and  
DAVID BRITT, CPA**

**Respondents.**



**DIVISION OF ENFORCEMENT'S MOTION TO TOLL THE  
TIME TO PRODUCE ITS INVESTIGATIVE FILE DURING THE  
PENDENCY OF THE MOTION TO STAY ADMINISTRATIVE PROCEEDINGS**

The Division of Enforcement ("Division"), pursuant to Rules of Practice 154(a) and 230(d), respectfully moves the Court for an order tolling the time by which the Division must produce its investigative file to Respondents while the United States Attorney's Application to Intervene and Motion to Stay Administrative Proceedings is pending, on the grounds set forth in the accompanying brief.

Dated: January 31, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Melissa Armstrong", written over a horizontal line.

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DIVISION OF ENFORCEMENT**

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**ADMINISTRATIVE PROCEEDING**

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**Respondents.**

**BRIEF IN SUPPORT OF THE DIVISION OF ENFORCEMENT'S MOTION TO TOLL  
THE TIME TO PRODUCE ITS INVESTIGATIVE FILE DURING THE PENDENCY  
OF THE MOTION TO STAY ADMINISTRATIVE PROCEEDINGS**

**Introduction**

On January 22, 2018, the Commission issued an Order Instituting Proceedings (“OIP”) against Respondents Cynthia Holder, Jeffrey Wada, David Middendorf, Thomas Whittle, and David Britt. The United States Attorney for the Southern District of New York has applied to intervene and moved to stay the administrative proceeding pending the resolution of a parallel criminal case involving substantially the same allegations. The Division of Enforcement (“the Division”) does not oppose this motion. The Division now respectfully moves this Court to toll the time by which the Division must produce its investigative file to Respondents until the resolution of the U.S. Attorney’s Motion to Stay.

**Motion for Tolling of the Time to Produce the Investigative File**

Respondent David Whittle was served with the OIP by certified mail on January 24, 2018. Respondents Cynthia Holder and David Middendorf were served with the OIP by certified mail on January 25, 2018. Respondent David Britt was served with the OIP by certified mail on January 26, 2018. Respondent Jeffrey Wada was served with the OIP by electronic mail to his counsel, who accepted service on his behalf, on January 29, 2018. No Respondent's counsel has filed a notice of appearance as of the time of this filing.

On January 26, 2018, the U.S. Attorney for the Southern District of New York applied to intervene and moved to stay the administrative proceedings against Respondents on the ground, *inter alia*, that a stay would avoid prejudicing the pending criminal prosecution. The Division does not oppose the U.S. Attorney's motion. On January 29, 2018, the Court granted the application to intervene and ordered Respondents to respond to the motion for a stay by February 5, 2018.

Pursuant to Rule of Practice 230(d), the Division must make its investigative file available to each respondent for inspection and copying within seven days of service. In prior cases, the Court has stayed the Division's production of its investigative file in granting a broader stay requested by a U.S. Attorney. See In the Matter of L&L Energy, Inc. et al., Admin. Proc. File No. 3-15815 (April 14, 2014) (granting a stay, including a stay of the production of the Division's investigative file, where criminal and administrative proceedings related to the same allegations and citing A.S. Goldmen & Co., 54 S.E.C. 349, 352 (1999)); In the Matter of Steven Cohen., Admin. Proc. File No. 3-15382 (August 8, 2013) (same). If the Division were to produce its investigative file as required by Rule 230(d), it would at least partially moot the U.S. Attorney's Motion before the Court has had an opportunity to rule on it.

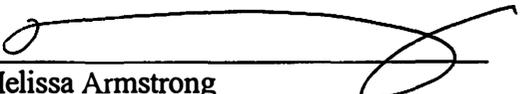
To avoid any potential prejudice to the pending criminal prosecution while the U.S. Attorney's Motion is pending before this Court, the Division seeks an order tolling the time for production of its investigative file until the Court has had an opportunity to determine whether it is appropriate to stay the administrative proceedings, including production of the Division's investigative file, until the resolution of the parallel criminal case. In the event the Court denies the U.S. Attorney's Motion to Stay, the Division requests five days from the date of the Court's order to make its investigative file available.

**Conclusion**

For the reasons set forth above, the Division respectfully requests that the Court grant the Division's Motion and enter an order tolling the time by which the Division of Enforcement must produce its investigative file to Respondents until the resolution of the United States Attorney's Application to Intervene and Motion to Stay Administrative Proceedings.

Dated: January 31, 2018

Respectfully submitted,

  
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COUNSEL FOR  
DIVISION OF ENFORCEMENT

**CERTIFICATE OF SERVICE**

I hereby certify that true copies of the Division of Enforcement's Motion to Toll the Time to Produce its Investigative File During the Pendency of the Motion to Stay Administrative Proceedings and Brief in Support were served by email on the following on this January 31, 2018, in the manner indicated below:

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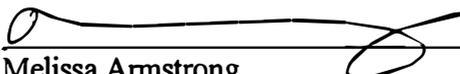
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