

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

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 5093 / December 21, 2018**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 33340 / December 21, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15519**

**In the Matter of**  
  
**Timbervest, LLC,**  
  
**Respondent.**

**ORDER AMENDING ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 203(e), 203(f) AND 203(k) OF THE  
INVESTMENT ADVISERS ACT OF 1940  
AND SECTION 9(b) OF THE INVESTMENT  
COMPANY ACT OF 1940, MAKING  
FINDINGS AND IMPOSING A CEASE-AND-  
DESIST ORDER PURSUANT TO SECTION  
203(k) OF THE INVESTMENT ADVISERS  
ACT OF 1940**

**I.**

On September 24, 2013 the Securities and Exchange Commission (“Commission”) instituted proceedings pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940 against Timbervest, LLC (“Timbervest” or Respondent), Joel Barth Shapiro (“Shapiro”), Walter William Anthony Boden, III (“Boden”), Donald David Zell, Jr. (“Zell”) and Gordon Jones II (“Jones”) (the “OIP”).

Respondent and the Division of Enforcement have moved pursuant to Rules 100, 154(a), and 200(d)(1) of the Commission’s Rules of Practice to vacate the Commission’s Order of September 17, 2015, amend the OIP by dismissing all claims with prejudice against Shapiro, Boden, Zell and Jones, withdrawing the factual allegations in Section II of the OIP and replacing them with the factual findings in paragraphs III 1-3, herein, dismissing claims under Section 206(1) and (2) of the Investment Advisers Act against Timbervest with prejudice, and adding allegations in Section II of the OIP that Timbervest violated the books and records provisions under Section 204 of the Advisers Act. Respondent Timbervest has also submitted an offer of settlement (the “Offer”). We grant the parties’ motion and have determined to accept Respondent Timbervest’s Offer.

## II.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Timbervest consents to the entry of this Order Amending Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940, Making Findings and Imposing a Cease-and-Desist Order Pursuant to Section 203(k) of the Investment Advisers Act of 1940("Order"), as set forth below.

Timbervest and the Division recognize that, according to *Lucia v. SEC*, 138 S. Ct. 2044 (2018), Timbervest would be entitled to a "new hearing" before "another ALJ (or the Commission itself)" if the case, which is currently on appeal to the United States Court of Appeals for the D.C. Circuit, were remanded to the Commission. *Id.* at 2055. Timbervest knowingly and voluntarily waives any claim or entitlement to such a new hearing before another ALJ or the Commission itself. Timbervest, Shapiro, Boden, Zell and Jones also knowingly and voluntarily waive any and all challenges to the administrative proceedings or any and all orders that were issued during or at the conclusion of those proceedings, whether before the ALJ, the Commission, or any court, based upon any alleged or actual defect in the appointment of ALJ Cameron Elliot.

## III.

On the basis of this Order and Respondent Timbervest's Offer, the Commission finds that:

### Summary

1. In September 2006, Timbervest entered into a contract to sell to a third party an Alabama timberland property held by New Forestry, LLC, ("New Forestry"), a fund managed by Timbervest that held pension assets of a large, publicly held company, and the deal closed in October 2006. In December 2006, Timbervest Partners, LP ("TVP"), another Timbervest-managed fund, offered to repurchase the Alabama timberland from the same third party for approximately 8% more than the price for which New Forestry had sold it, and the deal closed in February 2007. Timbervest failed to maintain books and records regarding the disclosure of the sale of the Alabama property and its repurchase by another fund to New Forestry or to TVP.

2. Timbervest also failed to maintain sufficient books and records regarding the disclosure to New Forestry of two brokerage fees that it paid in connection with the sale of the Alabama property and another property.

### Respondent

3. Timbervest, LLC ("Timbervest") is a Georgia limited liability company with its principal place of business in Atlanta, Georgia. Timbervest was established in 1995 and, during the relevant period, managed approximately \$1.2 billion in timber-related investments. Timbervest was registered as an investment adviser with the Commission on October 5, 1995. Timbervest ceased operations in May 2017.

### **Procedural History**

4. The Commission commenced this proceeding by issuing the OIP on September 24, 2013.
5. Respondent filed an answer on October 11, 2013.
6. The matter was assigned to Administrative Law Judge Cameron Elliot.
7. A hearing before Judge Elliot was held over the course of eight days between January 21 and February 6, 2014 in Atlanta Georgia.
8. The parties at the time filed post-hearing briefs, and on August 20, 2014, Judge Elliot issued an Initial Decision.
9. The parties filed respective petitions and briefs with the Commission and oral argument was held before the Commission on June 8, 2015.
10. On September 17, 2015, the Commission issued its decision in this matter.
11. The same day, the Commission also issued an Order Staying Remedial Sanctions, pursuant to which the sanctions imposed were stayed until the latter of (i) the expiration of the period for the respondents at the time to file a petition for review of the final order or (ii) if respondents at the time filed a timely petition for review, then until the court of appeals issued its mandate.
12. On November 13, 2015, Timbervest, Shapiro, Boden, Zell and Jones filed a petition for review with the United States Court of Appeals for the District of Columbia. *Timbervest, LLC, et al. v. SEC*, Case No. 15-1416. The petition asserted challenges under the appointments, equal protection and due process clauses of the Constitution, as well as arguments that all remedies were barred by the statute of limitations and that the Commission's findings and remedies were not supported by substantial evidence.
13. On June 24, 2016, on the Commission's motion, the D.C. Circuit remanded the case to the Commission for the limited purpose of allowing the Commission to consider additional evidence adduced by petitioners relating to the Commission's disgorgement order.
14. On July 5, 2016, the Commission issued an Order Scheduling Briefs that directed the parties to submit briefs on whether the Commission should modify its disgorgement order. On August 22, 2016, the Commission issued a recommendation that its disgorgement order be set aside given the additional evidence adduced by petitioners.
15. On August 8, 2017, the D.C. Circuit issued an order holding the appeal in abeyance pending the United States Supreme Court's decision of *Raymond J. Lucia Companies, Inc. v. SEC*, No. 17-130.

16. On June 21, 2018, the United States Supreme Court decided *Lucia v. SEC*, 138 S. Ct. 2044 (2018), in which the Court held, *inter alia*, that the Commission's ALJ's were not constitutionally appointed, and respondents who raised a timely Appointments Clause challenge are entitled to a "new hearing" before "another ALJ (or the Commission itself)." 138 S. Ct. at 2055.

17. On November 19, 2018, the D.C. Circuit issued a decision remanding this matter to the Commission for a new hearing before a new ALJ or the Commission, in accordance with the Supreme Court's decision in *Lucia*.

18. The parties have reached a settlement in principle, which the Division of Enforcement has recommended that the Commission accept.

#### **Conclusions of Law**

19. As a result of the conduct summarized above, which Respondent neither admits nor denies, Timbervest violated Section 204 of the Advisers Act, which generally requires an investment adviser to make and keep accurate books and records as required by the Commission.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that, pursuant to Section 203(k) of the Advisers Act:

Respondent Timbervest cease and desist from committing or causing any violations and any future violations of Section 204 of the Advisers Act.

It is hereby further ORDERED that, in light of the November 19, 2018 opinion by the D.C. Circuit, setting aside the Commission's September 17, 2015 opinion and order, the Commission opinions and orders dated August 22, 2016, September 17, 2015, and all prior orders of the Commission and its Administrative Law Judges in this matter no longer have any force or effect.

It is hereby further ORDERED that the proceedings and all claims against Shapiro, Boden, Jones and Zell are dismissed with prejudice

By the Commission.

Brent J. Fields  
Secretary