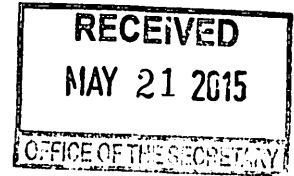


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**



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

In the Matter of :
 :
 :
Timbervest, LLC, :
Joel Barth Shapiro, :
Walter William Anthony Boden, III, :
Donald David Zell, Jr., :
and Gordon Jones II, :
 :
Respondents. :
 :

Division's Motion for Leave to Adduce Additional Evidence

The Division of Enforcement ("Division") respectfully seeks leave of the Commission to adduce additional evidence pursuant to Rule 452 of the Commission's Rules of Practice, stating as follows:

Rule 452 of the Commission's Rules of Practice provides that the Commission may, upon motion of any party or upon its own motion, accept into the record additional evidence at any time prior to issuance of a decision by the Commission, upon a showing that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously.

The Division moves the Commission to admit in evidence two additional items:
(1) a February 2015 article from the trade newsletter *Agri Investor* regarding recent plans by Timbervest to raise an additional \$400 million in investments through the establishment of two

new funds (“Timbervest on the Road for \$400m – Exclusive,” Louisa Burwood-Taylor, *Agri Investor*, February 16, 2015; attached as Exhibit A hereto); and (2) a statement written by Respondent Joel Shapiro and published in the newsletter *Pensions&Investments* regarding this administrative proceeding shortly after the issuance of the initial decision (“Timbervest CEO Disputes SEC,” *Pensions&Investments*, August 20, 2014; attached as Exhibit B hereto).¹

The February 16, 2015 article from *Agri Investor* concerning Timbervest’s plans to raise two new additional funds is material both to the appropriateness of a cease-and-desist order and of remedial associational bars. Timbervest’s recent activities support the Division’s view that the associational bars that it seeks would not be punitive, but rather, would be forward-looking, remedial in character, and designed for the protection of the investing public. *See, e.g., Vladislav Steven Zubkis*, 2005 WL 3299148 (Dec. 2, 2005) (associational bar is remedial and not subject to 28 U.S.C. § 2462 where it addresses a risk of future harm and the respondent lacks current competence); *SEC v. Steadman*, 603 F.2d 1126, 1140 (5th Cir. 1979) (identifying non-exclusive list of factors to be considered in deciding whether associational bar is in the public interest).

Respondent Shapiro’s statement in *Pensions&Investments* from August 20, 2014 demonstrates Respondent’s failure to accept any measure of responsibility for his violative conduct. Respondent’s continued failure to acknowledge his conduct is material to whether a cease-and-desist order and an associational bar should be imposed (in the event that the Commission agrees that remedial bars are not subject to 28 U.S.C. § 2462). Respondent Shapiro’s failure to acknowledge his violations is material to whether he poses a threat of future harm and lacks current competence to be associated with an investment adviser. *See, e.g., Steadman, Zubkis.*

¹ The Division attached the statement by Respondent Shapiro published in *Pensions&Investments* as an exhibit to its brief in support of its Petition for Review. The Division now moves the Commission to accept the statement into the evidentiary record pursuant to Rule 452 of the Rules of Practice in an abundance of caution.

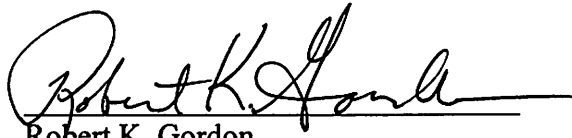
The Division had no opportunity to introduce either Exhibit A or Exhibit B in the hearing before the administrative law judge because both items and the information contained therein became available only after the issuance of the initial decision in this proceeding.

Oral argument before the Commission on the Division's and the Respondents' cross-appeals in this matter is scheduled for June 8, 2015.

Wherefore, the Division respectfully requests that the Commission accept Exhibit A and B hereto into the evidentiary record in this proceeding.

This 20th day of May, 2015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert K. Gordon", written over a horizontal line.

Robert K. Gordon
Anthony J. Winter
Attorneys for Division of Enforcement
Securities and Exchange Commission
950 E. Paces Ferry Road NE
Atlanta, Georgia 30326-1232

CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the foregoing Division's Motion for Leave to Adduce Additional Evidence by electronic mail and by UPS overnight mail this day addressed as follows:

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Dated: May 20, 2015

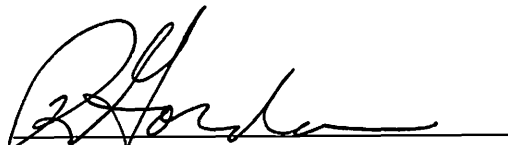

Robert K. Gordon
Attorney for Division of Enforcement

EXHIBIT A



SEARCH

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Timbervest on the road for \$400m – exclusive

by Louisa Burwood-Taylor on 16 FEBRUARY 2015 in Fundraising, News & Analysis

Timbervest, the institutional investment management firm, has launched a new forestry fund and is currently on the road targeting \$200 million.

The Targeted Opportunities Fund will pursue a similar structure to Timbervest's three previous funds but will invest more quickly and into previously-identified forestry assets, hence its name. "We transact a lot and investors are very receptive to that," said Bill Boden, chief investment officer.

Timbervest's last timber fund, Timbervest Partners III (TVP III), raised \$410 million between 2012 and 2013; its largest fund yet. TVP I is currently divesting assets and recently sold nearly 20,000 acres for \$33.9 million.

Timbervest is also on the road raising \$200 million for its fourth environment and conservation fund, Timbervest Crossover Partners IV. The fund will invest into assets such as habitat conservation, wetland mitigation, stream mitigation, ecosystem restoration and fish conservation. Investments will range in size from between \$2 million to \$30 million.

The 10-year fund is targeting a net internal rate of return of 15 percent. Timbervest will commit between \$3 million and \$5 million as the GP.

Timbervest expects existing investors to return and invest into the latest funds. TVP III had a majority of overseas investors.

EXHIBIT B



Pensions & Investments

West Coast

Defined Contribution Conference

Pensions & Investments

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Timbervest CEO disputes SEC

By: Pensions & Investments

Published: August 20, 2014



The story, "[SEC ruling expected in Timbervest case](#)" (Aug. 18, 2014) did not contain much of our side of the story in part because the reporter mostly relied upon the SEC's biased information. Among the points missed is the administrative law judge's prior ruling that disbarment of the principals will not be an outcome of these proceedings.

The alleged infractions in this proceeding are old and isolated. Of the hundreds of transactions Timbervest has conducted with enormous sums of money at stake, the Securities and Exchange Commission's Division of Enforcement has pointed to only three, all of which took place nearly eight

years ago. Two involve a payment of commission fees while the third is an alleged prearranged deal.

These supposed infractions represent less than 1% of the money in the 350-plus transactions completed during the last decade, which covered approximately 1.4 million acres of timberland costing more than \$1.5 billion (including more than \$140 million in timber harvests that have taken place). On average, sales completed approximated 112% of market value, all to the benefit of our clients.

Regarding the division's assertion we terminated a hunting lease on a client's property so that we could construct a hunting lodge for our own use, what really happened was we enhanced the property's value by millions of dollars with the addition of a lake, road system and other amenities a hunter as buyer would expect.

The so-called hunting lodge (see photo) in reality is a utility barn. To allege this was a "destination" for anyone is obviously absurd. We might note that the lease we canceled (for all of \$7,000 per annum) was also part of preparing the property for sale; it's simply not good practice to have armed hunters, contractors and prospective buyers on a property at the same time.

These stories would be humorous if they were not evidence of SEC attorneys' intent on achieving a predetermined, punitive result, rather than the truth. The division has ignored the statute of limitations and has more than reasonable doubt of its own assertions, yet it proceeds in its attack.

Witnesses on record early with clear memories and accounts of simple activities have flipped their scripts after meeting with investigators. Incredibly, a staff attorney inadvertently released a document to us, which clearly demonstrated our innocence. Even more incredible, the judge later allowed that document to be "protected" as privileged.

We have become prisoners of a process that lacks protections granted under the Constitution. Still, after years of unfettered access to Timbervest, there is not one document or other reliable piece of hard evidence to support any wrongdoing.

Now that the judge has ruled, we are prepared to appeal the decision. Unfortunately, at this stage, the initial appeal is to the same body of people — the SEC — which we believe has no regard for due process or the presumption of innocence. In federal court, we will finally be afforded independent judges and normal constitutional protections.

In summary, the reality does not at all reflect the tale spun by the SEC. Although the allegations against us are few and frivolous, we have spent an extraordinary amount of money to date to clear our names.

And, despite what was printed, our business is solid and growing.

Joel Shapiro

CEO

Timbervest LLC

Atlanta

Editor's note: SEC Administrative Law Judge Cameron Elliot on Aug. 20 ruled that Timbervest LLC and four of its principals violated securities laws in relation to the case discussed in this letter. Timbervest's lawyer said the firm intends to appeal. For more information about the ruling, see: [SEC rules Timbervest violated Investment Advisers Act](#)

Original Story Link: <http://www.pionline.com/article/20140820/ONLINE/140829983/timbervest-ceo-disputes-sec>

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