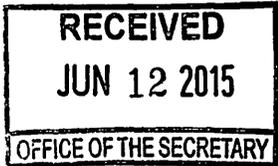


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**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**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 of Enforcement’s Motion for Reconsideration

The Division of Enforcement (“Division”) hereby moves for reconsideration of the Commission’s June 4, 2015 order in light of the established procedure under the Commission’s Rules of Practice for addressing allegations of bias through a recusal motion.

Respondents have requested leave to adduce additional evidence relating to their claims that the pending proceeding violates due process because the presiding administrative law judge was biased. The Division opposed on the grounds that Respondents’ showing is inadequate to justify their request, *see Schweiker v. McClure*, 456 U.S. 188, 195 (1982), and that, in any event, the Commission’s *de novo* review would cure any alleged defect in the proceeding. On June 4, 2015, the Commission issued an order inviting the presiding administrative law judge to file an affidavit addressing the bias issue (if he so chose). On June 9, 2015, the Division was informed by the Office of the Secretary that no affidavit will be filed.

Rule 111(f) of the Commission's Rules of Practice contains an established procedure for allowing Respondents to raise their concerns via a motion for recusal (should they so choose). See 17 C.F.R. § 201.111(f). That Rule gives a hearing officer of an administrative proceeding the authority to "recus[e] him or herself upon motion made by a party or upon his or her own motion." Id. In general, where a party is seeking to recuse a judge, a recusal motion should be directed to the presiding judge for a determination in the first instance. See, e.g., United States v. Torkington, 874 F.2d 1441, 1446 (11th Cir. 1989) (the presiding "judge has the initial responsibility to recuse himself from a case"); Keating v. Office of Thrift Supervision, 45 F.3d 322, 326-27 (9th Cir. 1995) (the recusal procedure "reflects an underlying policy that a decisionmaker asked to recuse himself or herself should be presented with the basis for the request").

The Division maintains its opposition to Respondents' bias-related discovery requests. Nevertheless, should the Commission decide to pursue further the bias issue, we request that it do so consistent with the above-described procedures rather than through discovery, by remanding the case to the administrative law judge for the limited purpose of permitting Respondents the opportunity to file a motion under Rule 111(f) and the administrative law judge the opportunity to rule on that motion.

This 11th day of June, 2015.

Respectfully submitted,



M. Graham Loomis
Robert K. Gordon
Anthony J. Winter
Attorneys for the Division of Enforcement
Securities and Exchange Commission
950 E. Paces Ferry Road NE, Suite 900
Atlanta, Georgia 30326-1232
404-842-7600

CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the foregoing document by electronic mail and by UPS overnight mail this day addressed as follows:

Brent J. Fields
Office of the Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
(facsimile and UPS overnight mail)

Stephen D. Councill, Esq.
Julia Blackburn Stone, Esq.
Rogers & Hardin, LLC
2700 International Tower
229 Peachtree Street
Atlanta, GA 30303
scouncill@rh-law.com
jstone@rh-law.com

Nancy R. Grunberg, Esq.
Gregory Kostolampros, Esq.
McKenna Long & Aldridge LLP
1900 K Street, N.W.
Washington, DC 20006
ngrunberg@mckennalong.com
gstolampros@mckennalong.com



Anthony J. Winter
Attorney for the Division of Enforcement