

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 4096 / May 27, 2015

INVESTMENT COMPANY ACT OF 1940
Release No. 31652 / May 27, 2015

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

ORDER REQUESTING
ADDITIONAL SUBMISSIONS AND
ADDITIONAL BRIEFING

On May 20, 2015, Respondents filed a Motion to Allow Submission of Additional Evidence and for Leave to Adduce Additional Evidence. Based on that motion, the Respondents now appear to be asserting that the manner of appointment of the administrative law judges who presided over this matter violates the Appointments Clause of the Constitution.¹

The Commission's consideration of the Appointments Clause challenge would be assisted by the submission of additional material for inclusion in the record and by the submission of additional briefing.

Accordingly, it is ORDERED that the Division of Enforcement shall by June 4, 2015 file and serve on the parties an affidavit from an appropriate Commission staff member, with supporting exhibits if appropriate, setting forth the manner in which ALJ Cameron Elliot and Chief ALJ Brenda Murray were hired, including the method of selection and appointment.²

It is further ORDERED that the parties shall file simultaneous supplemental briefs, not to exceed ten double-spaced pages, by July 1, 2015. The briefs shall be limited to the following

¹ This order is not to be construed as expressing any view as to the Commission's disposition of Respondents' May 20th motion (including with respect to the materiality of the discovery sought therein) or as to the merits of Respondents' underlying claims. Respondents' Motion remains pending before the Commission.

² In light of the oral argument which is scheduled for June 8, 2015, the Division is advised that no extensions of time will be granted to file the affidavit.

two issues: (1) whether, assuming solely for the sake of argument that the Commission's ALJs are "inferior officers" within the meaning of Article II, Section 2, Clause 2 of the Constitution,³ their manner of appointment violates the Appointments Clause; and (2) the appropriate remedy if such a violation is found.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Brent J. Fields
Secretary

³ The Commission separately received supplemental briefing on that issue.