

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10440 / November 30, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 82178 / November 30, 2017

INVESTMENT ADVISERS ACT OF 1940
Release No. 4816 / November 30, 2017

INVESTMENT COMPANY ACT OF 1940
Release No. 32929 / November 30, 2017

In re:
Pending Administrative Proceedings

ORDER

On November 29, 2017, the Solicitor General on behalf of the United States submitted a brief in *Raymond J. Lucia and Raymond J. Lucia Companies, Inc. v. Securities and Exchange Commission* (No. 17-130) in which the Solicitor General agreed with the petitioners that the U.S. Supreme Court should decide whether administrative law judges of the Commission are inferior officers under the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2. The Solicitor General took the position that Commission administrative law judges are inferior officers for purposes of the Appointments Clause but recommended that the Supreme Court appoint an amicus curiae to defend the contrary judgment of the Court of Appeals for the District of Columbia Circuit.

To put to rest any claim that administrative proceedings pending before, or presided over by, Commission administrative law judges violate the Appointments Clause, the Commission—in its capacity as head of a department—hereby ratifies the agency’s prior appointment of Chief Administrative Law Judge Brenda Murray and Administrative Law Judges Carol Fox Foelak, Cameron Elliot, James E. Grimes, and Jason S. Patil.

In addition, the Commission orders all administrative law judges presiding over pending proceedings for which no initial decision has yet been issued to undertake the following actions in each of those proceedings:

- Reconsider the record, including all substantive and procedural actions taken by an administrative law judge pursuant to Rule 111 of the Commission’s Rules of Practice, 17 C.F.R. § 201.111;
- Issue an order granting parties until January 5, 2018 to submit any new evidence the parties deem relevant to the administrative law judge’s reexamination of the record;

- Determine, based on such reconsideration, whether to ratify or revise in any respect all prior actions taken by an administrative law judge in the proceeding; and
- Issue an order by February 16, 2018 stating that the administrative law judge has completed the reconsideration ordered above and setting forth a determination regarding ratification.

The Commission hereby tolls the time periods in Rule of Practice 360(a) until the administrative law judge issues the order on ratification. The administrative law judges are directed to notify the parties in the cases pending before them of this order.

In matters pending before the Commission in which an administrative law judge has issued an initial decision, the Commission hereby remands any such matter to the administrative law judge who issued the initial decision. A list of matters is attached as Exhibit A to this Order. The administrative law judge is ordered to undertake the following actions in each of those proceedings:

- Reconsider the record, including all substantive and procedural actions taken by an administrative law judge pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111;
- Issue an order granting parties until January 5, 2018 to submit any new evidence the parties deem relevant to the administrative law judge's reexamination of the record;
- Determine, based on such reconsideration, whether to ratify or revise in any respect all prior actions taken by an administrative law judge in the proceeding; and
- Issue an order by February 16, 2018 stating that the administrative law judge has completed the reconsideration ordered above and setting forth the determination regarding ratification.

The administrative law judge may, for good cause shown, modify any of these deadlines, including the date by which the administrative law judge's order on ratification is to be issued.

Finally, we note that on May 22, 2017, in light of *Bandimere v. SEC*,¹ which held that the Commission's administrative law judges are inferior officers who must be appointed in a manner consistent with the Appointments Clause, U.S. Const. Art. II, § 2, cl. 2, we stayed: (1) all administrative proceedings assigned to an administrative law judge in which a respondent has the option to seek review in the Tenth Circuit of a final order of the Commission under Section 9(a) of the Securities Act, Section 25(a) of the Securities Exchange Act, Section 43(a) of the Investment Company Act, or Section 213(a) of the Investment Advisers Act; and (2) all administrative proceedings pending before the Commission on review from an initial decision by an administrative law judge in which a respondent has the option to seek review in the Tenth

¹ 844 F.3d 1168 (10th Cir. 2016), *reh'g denied*, 2017 WL 1717498 (May 3, 2017) (10th Cir. No. 15-9586), *petition for cert. pending* (No. 17-475).

Circuit of a final order of the Commission under these same statutory provisions. Having now ratified the appointment of the Commission's administrative law judges, thereby resolving any Appointments Clause claims that may have arisen in the aforementioned cases under *Bandimere*, we hereby lift the stays imposed by our May 22, 2017 order and direct that those proceedings should resume pursuant to our above instructions.

By the Commission.

Brent J. Fields
Secretary

Exhibit A

A.C. Simmonds, et al., File No. 3-17999
Accelerated Aquisition XVII, et al., File No. 3-18146
Aervision Holdings, Inc., et al., File No. 3-18199
AFN, Inc., et al., File No. 3-17743
Alexandre S. Clug, File No. 3-16318
Altovida Inc., et al., File No. 3-18104
American Magna Corp., et al., File No. 3-18105
American-Swiss Capital, Inc., et al., File No. 3-18156
ARX Gold Corporation, File No. 3-18185
Atomic Paintball, Inc., et al., File No. 3-17991
Aurios, Inc., et al., File No. 3-18092
Axesstel, Inc., File No. 3-17941
Axiom Oil & Gas Corp., et al., File No. 3-18096
Balqon Corporation, et al., File No. 3-18095
Barbara Duka, File No. 3-16349
Bioelectronics Corp., File No. 3-17104
BioPharma Manufacturing Solutions Inc., et al., File No. 3-18148
Biovest International, Inc., et al., File No. 3-17935
Bluforest, Inc., File No. 3-17558
Bohai Pharmaceuticals Group Inc., File No. 3-18151
BOLDFACE Group, Inc., et al., File No. 3-18103
Brian Michael Berger, File No. 3-18129
Canso Enterprises Ltd., et al., File Nos. 3-17984, 17989, 17985, 17986, 17987, 17988, 17989
CellCyte Genetics Corp., File No. 3-18141
Century Acquisition Corp. and Eastern Acquisition Corp., File No. 3-18162
Chile Mining Technologies Inc., File No. 3-18174
China Du Kang Co., Ltd., File No. 3-18106
China Fruits Corp. and SkyStar Bio-Pharmaceutical Co., File No. 3-18017
China Greenstar Corporation, et al., File No. 3-18097
China Hefeng Rescue Equipment, Inc., et al., File No. 3-18179
Christopher M. Gibson, File No. 3-17184
Cibolan Gold Corporation, File No. 3-18077
Circle Star Energy Corp. and Energy Holdings International, Inc., File No. 3-18142
CNK Global, Inc. (a/k/a American Life Holding Co., Inc.), File No. 3-18082
Cono Italiano, Inc., et al., File No. 3-18177
Core Resource Management, Inc., et al., File No. 3-18079
Creator Capital Ltd., File No. 3-18189
Dearborn Bancorp, Inc., File No. 18223
dELiA*s Inc. and Global Energy, Inc., File No. 3-18037
Diane Dalmy, File No. 3-16339
Digital Brand Media & Marketing Group, Inc., File No. 3-17990
Edward M. Daspin, File No. 3-16509
Energy Edge Technologies Corp. and Focus Gold Corp., File No. 3-18038
Engage Eco Solutions, Inc., et al., File No. 3-18191

Evolucia, Inc. and OSL Holdings, Inc., File No. 3-18014
E-Waste Systems, Inc., File No. 3-18107
Frank Chiappone, et al., File No. 3-15514
Fu Lu Cai Productions Ltd. and Heavy Earth Resources, Inc., File No. 3-18173
Gamzio Mobile, Inc., File No. 3-18170
GC China Turbine Corp., File No. 3-16604
Geoglobal Resources, Inc. and USA Synthetic Fuel Corp., File No. 3-18153
GL Capital Partners, LLC and GL Investment Services, LLC, File No. 3-17818 and 17819
GO EZ Corporation, et al., File No. 3-18204
GS Enviroservices, Inc., et al., File No. 3-17977
Guardian 8 Holdings, et al., File No. 3-18221
Hall Tees, Inc., et al., File No. 3-18155
Hampshire Group, Limited, File No. 3-18201
Hydrogen Future Corporation, et al., File No. 3-18220
HydroPhi Technologies Group, Inc., et al., File No. 3-18208
Ibex Advanced Mortgage Technology, Inc., File No. 3-18047
Icon Vapor, Inc., et al., File No. 3-18210
IMK GROUP, INC., et al., File No. 3-18203
Immunoclin Corp. et al., File No. 3-18190
Infinity Real Estate Holdings Corporation, et al., File No. 3-18217
Intellicell Biosciences, Inc., File No. 3-17990
James A. Winkelmann, File No. 3-17253
James E. Cohen and Joseph A. Corazzi, File No. 3-15974
James P. Griffin, File No. 3-17848
Jeffrey Gainer, File No. 3-18130
Joe Lawler, File No. 3-17650
John Austin Gibson, Jr., File No. 3-17856
John Thomas Capital Management, L.P., File No. 3-15255
Joseph J. Fox, File No. 3-16795
JuQun, Inc., et al., File No. 3-18193
KollagenX Corp., et al., File No. 3-18207
Kun De International Holdings, Inc., and Sutor Technology Group Limited, File No. 3-18169
Kung Fu Dragon Group Limited, File No. 3-18091
Laurie Bebo, File No. 3-16293
Louis V. Schooler, File No. 3-17115
Mackenzie Taylor Minerals, Inc., et al., File No. 3-18149
Medicus Homecare Inc., File No. 3-18081
Michelle L. Helterbran Cochran, CPA, File No. 3-17228
Montalvo Spirits, Inc., et al., File No. 3-18078
Neurologix, Inc., et al., File No. 3-18180
New Media Insight Group, Inc. and Pacific Sands, Inc., et al., File No. 3-18206
New Western Energy Corp. and Primco Management, Inc., File No. 3-18007
New York Sub Co., File No. 3-18038
Next Galaxy Corp. and Novamex Energy, Inc., File No. 3-18219
Paul Edward (“Ed”) Lloyd, Jr., CPA, File No. 3-16182

Penny Auction Solutions, Inc., et al., File No. 3-18202
Roy Dekel, File No. 3-17751
Saving2Retire, LLC and Marian P. Young, File No. 3-17352
Sean P. Finn and M. Dwyer LLC, File No. 3-17693
Shervin Neman and Neman Financial, Inc., File No. 3-17699
SIFMA, File No. 3-15350
Spring Hill Capital Markets, LLC, et al. File No. 3-16353
StationDigital Corp., File No. 3-18004
Talman Harris and Victor Alfaya, File No. 3-17874
Tintic Gold Mining Company, File No. 3-18157
Timothy W. Carnahan, File No. 3-16386
Tod A. Ditommaso, File No. 3-17550
Vortronix Technologies, Inc., File No. 3-18023
Warren D. Nadel, File No. 3-17883
William D. Bucci, File No. 3-17888