

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4824/May 23, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17316

In the Matter of

LONGWEI PETROLEUM INVESTMENT
HOLDING LIMITED

NOTICE OF STAY

In light of the U.S. Court of Appeals for the Tenth Circuit's recent decision denying rehearing en banc in *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), *reh'g and reh'g en banc denied*, No. 15-9586, 2017 WL 1717498 (10th Cir. May 3, 2017), the Securities and Exchange Commission has stayed 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. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10365, 2017 WL 2224348 (May 22, 2017).

Respondent is a Colorado corporation and therefore would, under Section 25(a) of the Securities Exchange Act of 1934, have the option to seek review in the Tenth Circuit of a final order of the Commission in this matter. 15 U.S.C. § 78y(a)(1); Order Instituting Proceedings (OIP) at 1. Accordingly, this proceeding is stayed.

The Division of Enforcement has filed a number of declarations concerning service of the OIP on Respondent, which has its principal place of business in China. Given the difficulty of serving Respondent in China, the Division sent the OIP to a Colorado-state-court-appointed receiver for Respondent with the power to defend state and federal court proceedings. *See Decl. of Timothy L. Evans ¶¶ 7-9* (Apr. 26, 2017). On May 22, 2017, counsel for the receiver filed a letter stating it had received the OIP. *See Letter from Caroline C. Fuller, Fairfield and Woods P.C., to Brent J. Fields, Secretary, SEC* (May 16, 2017). The letter also asserts that "further proceedings by the SEC without approval of the receivership court [would] be a violation of . . . the Order Appointing Receiver," yet notes that the receiver "does not dispute" that Respondent is delinquent in its reporting obligations under the Exchange Act and "has no objection to either the suspension or revocation of the registration of each class of [Respondent's] registered securities." *Id.* The letter offers no support for its suggestion that the state court's order binds this federal administrative proceeding. *Cf. Houston Bus. Journal, Inc. v. Office of Comptroller of Currency*, 86 F.3d 1208, 1211 (D.C. Cir. 1996) ("In state court the federal government is shielded by sovereign immunity, which prevents the state court from enforcing a subpoena.");

Clark Constr. Co. v. Pena, 930 F. Supp. 1470, 1480 (M.D. Ala. 1996) (“[A] state court cannot enjoin a federal agency.”).

Given that this proceeding is now stayed pursuant to Commission order, I will defer ruling on the issues of service and how to proceed until after the Commission lifts the aforementioned stay.

Jason S. Patil
Administrative Law Judge