**IN THE UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF DELAWARE**

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| IN RE | ) | Chapter 11 |
| | ) | |
| WOODBRIDGE GROUP OF COMPANIES, LLC, et al., | ) | Case No. 17-12560-KJC |
| | ) | (Jointly Administered) |
| Debtors. | ) | |
| | ) | |
| WOODBRIDGE GROUP OF COMPANIES, LLC, et al., | ) | Adversary Proceeding |
| Plaintiff, | ) | No. 17-51891 |
| | ) | |
| v. | ) | **Hearing Date: Jan. 5, 2018 at 11:00 a.m.** |
| | ) | |
| SECURITIES AND EXCHANGE COMMISSION, | ) | |
| | ) | |
| Defendant. | ) | |

**OBJECTION OF THE U.S. SECURITIES AND EXCHANGE COMMISSION TO THE DEBTORS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ENFORCING THE AUTOMATIC STAY PURSUANT TO SECTIONS 105(a) AND 362(a) OF THE BANKRUPTCY CODE**

The U.S. Securities and Exchange Commission (the "SEC"), objects to the Debtors' Motion for Temporary Restraining Order and Preliminary Injunction Enforcing the Automatic Stay Pursuant to Sections 105(a) and 362(a) of the Bankruptcy Code ("Automatic Stay Motion"), and represents as follows:

## PRELIMINARY STATEMENT

The Debtors are asking the Court for extraordinary relief – to enjoin a civil police and regulatory action pending in the United States District Court for the Southern District of Florida,

*SEC v. Shapiro et. al.*, 17-24624 (the "District Court Action") in which no judgment has been entered.

The Court should deny the motion in its entirety.[1]

First, the exact issue raised in the Automatic Stay Motion -- whether the District Court Action should be stayed pending the disposition of these bankruptcy cases -- was set for hearing by the District Court *sua sponte* by Order to Show Cause ("OSC") *before* the Debtors filed their adversary complaint and Automatic Stay Motion. The Debtors were well aware of the OSC prior to filing their adversary complaint and Automatic Stay Motion.[2] As a result, the Debtors are, in effect, improperly asking this Court to enjoin the District Court from determining the prior pending motion, over which the District Court has concurrent jurisdiction.

Second, the Debtors have cited to no precedent for the substantive relief they request and the SEC is aware of none. The Debtors argue, without any support, that appointment of a receiver is tantamount to the collection on a money judgment and is therefore an exception to the police and regulatory exception to the automatic stay. This argument borders on the frivolous.[3]

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[1] Although the Debtors' motion seeks to stay the action against them, their proposed order purports to stay the District Court Action entirely against all of the Debtor and non-Debtor defendants including Robert Shapiro.

[2] The Debtors refer to the OSC in paragraph 57 of the adversary complaint and attach it as an exhibit to the complaint, but utterly fail to discuss it or its effect in the Automatic Stay Motion.

[3] The Debtors' primary argument for application of the automatic stay appears to be that because the recently hired professionals control the Debtors and they are independent and have cooperated with the SEC, there is no need for the appointment of a receiver. Although that disputed factual argument would be relevant to determining whether a trustee or receiver should be appointed in these cases, it is irrelevant to the determination of whether the automatic stay applies to the District Court Action. Moreover, the SEC believes that current management, which was handpicked by Robert Shapiro, is tainted and has filed a motion for appointment of a Chapter 11 trustee. In addition, their claim to have fully cooperated with the SEC rings hollow. Gibson Dunn began working for the Debtors in August 2017. [Dkt.# 122 at p. 8]. The SEC was compelled to file a motion to compel compliance with the SEC's administrative subpoenas on

Finally, the Debtors request that the Court enjoin the District Court Action under Section 105 of the Bankruptcy Code because they will suffer irreparable harm if an injunction does not issue. However, the District Court has not scheduled a hearing on the SEC's motion for appointment of a receiver and the only matter pending in the District Court is the January 25 hearing on whether to stay the District Court Action. Accordingly, the Debtors cannot show that they will suffer irreparable harm if an injunction does not issue. In any event, appointment of a receiver in the District Court Action would merely result in a change of management of the Debtors-in-Possession, and not in the transfer of control to the District Court or the SEC of any assets of the Debtors. If a receiver is appointed, the bankruptcy cases would continue in this Court subject to the receiver's management.

## ARGUMENT

### I. The Court Should Not Enjoin The District Court From Determining Whether The Automatic Stay Applies To The District Court Action Pursuant To The Prior Pending OSC.

The applicability of the automatic stay to the District Court action was put before the District Court on December 20, 2017, in the SEC's initial motion for appointment of a receiver, where the SEC specifically included analysis of why the District Court action could still proceed even in light of the bankruptcy and a receiver could be appointed. Moreover, as discussed above, on the morning of December 28, 2017, the District Court *sua sponte* entered the OSC why the District Court Action should not be stayed, requiring all parties to brief the issue by January 18, 2018, and setting a hearing for January 25, 2018. The Debtors filed their adversary

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October 31, 2017. Failure to comply with an administrative subpoena does not evidence cooperation with the SEC. The SEC's view that current management is tainted is shared by the creditors' committee, which has also filed a motion for appointment of a Chapter 11 trustee. [Dkt.#150].

proceeding seeking to stay the District Court Action subsequent to entry of the District Court's OSC, and with full knowledge of the pending OSC. Because the District Court has concurrent jurisdiction to determine the applicability of the automatic stay to the District Court Action, there was no reason for the Debtors to file their adversary proceeding other than making a completely disingenuous attempt to pre-empt the District Court's jurisdiction to determine the applicability of the automatic stay pursuant to its prior pending OSC. *See Brock v. Morysville Body Works,* 829 F.2d 383, 387 (3d Cir. 1987) ("[W]hether the stay applies to litigation otherwise within the jurisdiction of a district court or court of appeals is an issue of law within the competence of both the court within which the litigation is pending and the bankruptcy court supervising the reorganization.") (internal citations omitted); *In re Dolen,* 265 B.R. 471, 476 (Bankr. M.D. Fla. 2001) ("The district court has concurrent jurisdiction with the bankruptcy court to determine the extent to which the Section 362 automatic stay limits the actions of the Commission in its ability to pursue the pending district court action.").

A similar factual situation to the one before the Court was presented in *In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litig.*, 140 B.R. 969 (E.D. IL 1992) (Easterbrook, Circuit Judge, sitting by designation). In that case, Judge Easterbrook had set a briefing schedule and hearing on whether the automatic stay applied to the litigation pending in the district court, so that "[a]n orderly process was in train, leading to an orderly decision" by the district court. *Id.* at 971. Subsequent to entry of that scheduling order, the debtor obtained an *ex parte* order from the Delaware bankruptcy court (Balick, B.J.) enjoining the plaintiff from prosecuting the automatic stay motion pending in the district court. In rejecting the injunction, first, Judge Easterbrook held that he had jurisdiction to determine the applicability of the automatic stay to

the litigation pending before him. *Id.* at 973-74. Judge Easterbrook then held that the bankruptcy court's injunction was improper, stating as follows:

> For one federal court to issue an injunction forbidding litigation in another is extraordinary, given principles of comity among coordinate tribunals. For a bankruptcy judge to issue an injunction with the effect of preempting resolution of a pending motion in district court is unheard-of. Well, perhaps not *un*-heard of. I found one case in which a bankruptcy court did so, and the district judge brushed the order aside in derision, treating the order as so patently unauthorized that no further explanation was warranted.

*Id.* at 974 (internal citations omitted). [4]

Here, the Debtors knew that the District Court had set a briefing schedule and a hearing date to address the applicability of the automatic stay to the District Court Action, but apparently want to avoid the District Court making the ultimate determination. This is clear gamesmanship by Shapiro's recently handpicked retained professionals that should not be rewarded by this Court. *See also Royer v. Dow Corning Corp.*, 1995 U.S. Dist. LEXIS 16259 at*5 (D.N.H. 1995) ("The bankruptcy court's order is not precise, but it seems to enjoin this court from exercising its jurisdiction to determine whether and to what extent Dow Corning's bankruptcy affects this pending action. Of course, a bankruptcy court cannot, even indirectly, enjoin a district court from determining whether § 362 of the Code operates to stay pending district court litigation involving non-debtor defendants. The law is not ambiguous on the point; *both* this court and the

[4] Most importantly, this authority demonstrates the inherent flaw with the Debtors' request for a temporary restraining order and injunction. For even if this Court issues the TRO, then the SEC will be subject to two inconsistent orders issued by two different courts: one order by the District Court to file a brief on the stay issue by January 18th, and a separate order by this Court barring the SEC from doing so.

bankruptcy court have *concurrent* jurisdiction to decide such questions.") (emphasis in original).[5]

## II. The District Court Action Is Excepted From The Automatic Stay As The Exercise Of A Governmental Unit's Police Or Regulatory Power.

It is well settled that the automatic stay does not bar the SEC from commencing or continuing an action to enforce the SEC's police and regulatory powers. Section 362(b)(4) of the Bankruptcy Code provides:

> (b) [t]he filing of a petition * * * does not operate as a stay -
>
> (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit * * * to enforce such governmental unit's * * * police or regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.

11 U.S.C. §362(b)(4).[6]

"A proceeding that seeks to curb certain behavior, such as defrauding investors, by imposing financial liability or seeking an injunction, is one that enforces the government's police or regulatory power and serves to protect public health and safety." *SEC v. Friedlander*, 2002 U.S. Dist. LEXIS 13296 at *4 (S.D.N.Y. 2002) (citations omitted).

[5] In *Brock*, the Third Circuit stated that it had concurrent jurisdiction with the district court overseeing the debtor's bankruptcy case to enforce a citation for abatement and a penalty issued by the Department of Labor, and that the debtor could have sought a Section 105 injunction from the district court if it could establish that enforcement of the order by the Third Circuit threatened the assets of the estate. *Brock*, 829 F.3d at 386-87. However, nothing in *Brock* suggests that the mere determination by the district court of the applicability of the automatic stay to litigation pending before it would establish "cause" for the issuance of a Section 105 injunction.

[6] Section 362(b)(4) was amended in 1998 to include within the governmental unit exception "any act" by a governmental unit "to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," which would otherwise be stayed pursuant to Section 362(a)(3). *U.S. v. Klein*, 264 B.R. 565, 570 (9th Cir. BAP 2001).

The purpose of the Section 362(b)(4) exception "is to prevent a debtor from frustrating necessary governmental functions by seeking refuge in bankruptcy court," *SEC v. Brennan,* 230 F.3d 65, 71 (2d Cir. 2000), and to "to prevent the bankruptcy court from becoming the haven for wrongdoers." *Bilzerian v. SEC*, 146 B.R. 871, 873 (M.D. Fla. Bankr. 1992) (citations omitted). Thus, numerous courts have held that SEC enforcement cases are "police and regulatory" actions within the scope of Section 362(b)(4). *See e.g., SEC v. Miller,* 808 F.3d 623 (2d Cir. 2015),(entry of asset freeze order against relief defendant in SEC enforcement action excepted from stay and does not constitute enforcement of money judgment); *Brennan,* 230 F.3d 65, 71 (2d Cir. 2000) (SEC civil enforcement actions are excepted from the automatic stay); *SEC v. Towers Financial Corporation*, 205 B.R. 27 (S.D.N.Y. 1997) (SEC not stayed from continuing enforcement action against Chapter 7 debtor); *Bilzerian*, 146 B.R. at 873 (SEC not stayed from obtaining disgorgement judgment against debtor for ill-gotten gains so long as SEC does not enforce money judgment). The only act that is subject to the stay is the Commission's ability to enforce a money judgment against the debtor.

Accordingly, the "police and regulatory power" stay exception allows the Court to appoint a receiver for the corporate Debtors in these bankruptcy cases. In *SEC v. First Financial Group of Texas*, 645 F.2d 429 (5th Cir. 1981), the Court held that the district court's appointment of a receiver fell within the police power exception, because "[t]he appointment of a receiver is a well-established equitable remedy available to the SEC in civil enforcement proceedings for injunctive relief." *Id.* at 438. The court noted that "it [was] likely that, in the absence of a receiver to maintain the status quo, the corporate assets will be subject to diversion and waste." *Id. at* 438. In other jurisdictions, courts similarly hold that the appointment of a receiver in an SEC enforcement action falls within the scope of the "police and regulatory power" stay

exception in Section 362(b)(4). *See SEC v. Wolfson*, 309 B.R. 612, 620 (D. Utah 200(automatic stay exception permits court to appoint a receiver); *SEC v. Behrens*, 2014 U.S. Dist. LEXIS 94460 at *8 (D. Neb. July 11, 2014) (SEC receiver's activities do not involve enforcement of a money judgment subject to the automatic stay); *SEC v. Morriss*, 2012 U.S. Dist. LEXIS 81809 at **2-3(E.D. Mo. June 13, 2012) (receiver appointed eight days after defendants filed for bankruptcy). Thus, the District Court clearly has the authority to appoint a Receiver here.

The Debtors contend that the District Court Action fits within the exception to the Section 362(b)(4) exception from the automatic stay (and is therefore subject to the automatic stay) because it "furthers [the SEC's] efforts to recover on a money judgment [in that it] . . . seeks to enforce civil money penalties, disgorgement of certain proceeds from funding, and to appoint a receiver." Automatic Stay Motion at 20. They further contend that "the appointment of a receiver as sought by the SEC in the Receiver Motion constitutes an impermissible attempt to enforce a money judgment – specifically, a *future* judgment on the counts in the SEC Complaint seeking monetary relief . . . .") (emphasis added). The argument that appointment of a receiver constitutes the collection on a *future* judgment is frivolous and completely misconstrues the primary role of a federal equity receiver in an SEC enforcement action – to conserve the receivership estate. *Esbitt v. Dutch-Am. Mercantile Corp.*, 335 F.2d 141, 143 (2d Cir. 1964) ("A primary purpose of appointing a receiver is to conserve the existing estate."). *See also Berhrens*, 2014 U.S. Dist. LEXIS 94460 (D. NE July 11, 2014) (SEC receiver's activities do not involve enforcement of a money judgment subject to the automatic stay). The Debtors have cited to no decision after enactment of the 1998 amendments to Section 362(b)(4) which held that appointment of a receiver in an SEC enforcement action *prior to entry of judgment* was

subject to the automatic stay.[7] *See also Morriss*, 2012 U.S. Dist. LEXIS at **6-7 (finding that SEC's action promoted public policy and thus rejecting defendant's argument that Section 362(b)(4) did not apply because the SEC's purpose in bringing the action was to obtain a money judgment).

In *SEC v. Miller*, 808 F.3d 623 (2d Cir. 2015), the Second Circuit addressed an argument similar to the one advanced by the Debtors here – that actions taken by the SEC that affect estate property prior to entry of judgment were nevertheless a step preparatory towards money collection that should be subject to the automatic stay. The Second Circuit rejected that argument and stated as follows:

> Relief Defendants attempt to characterize the freeze as an impermissible 'step []preparatory to money collection' that is functionally equivalent to Brennan's repatriation and registry deposit order. The argument is strained and unpersuasive. By that logic, many or most aspects of statutorily unstayed governmental unit actions could be characterized as 'steps preparatory to money collection,' so long as the initial complaint sought monetary relief. We decline to adopt the interpretation of the exception used by the Relief Defendants, which would effectively swallow the rule.

*Id.* at 633. Although the Second Circuit stated that the effect of section 362(b)(4) is not to render all orders entered prejudgment as not stayed and all orders entered post judgment stayed, it made clear that "to be sure, the timing of the order's entry constitutes a crucial factor in [the] analysis" of whether the order at issue violates the automatic stay as an improper attempt to collect on a money judgment. *Id.*

The Debtors also argue that the automatic stay should apply to the District Court Action because they are now being managed by the recently retained professionals and the alleged

[7] The Debtors cite to *In re F.D. Roberts Sec., Inc.*, 115 B.R. 485, 492 (Bankr. D.N.J. 1990) for the proposition that appointment of a receiver to exercise control over property of the estate would be stayed by the automatic stay. That case dealt with a state court receiver and was decided prior to the 1998 amendments to the Code that specifically extended the Section 362(b)(4) exception to acts to obtain possession or control over estate property.

fraudster, Robert Shapiro, is no longer in control As discussed above, whether the retained professionals are truly independent is a disputed factual matter that is relevant only to whether a receiver or trustee should be appointed, and not to the legal issue of whether the District Court Action is subject to the automatic stay. *See, e.g.*, *Federal Reserve System v. MCorp Financial, Inc.*, 502 U.S. 32, 40 (1991) (rejecting argument that in order for Section 362(b)(4) to apply to a governmental unit's action, the court must first determine whether the proposed exercise of police or regulatory power is legitimate; "MCorp's broad reading of the stay provisions would require bankruptcy courts to scrutinize the validity of every administrative or enforcement action brought against a bankrupt entity. Such a reading is problematic, both because it conflicts with the broad discretion Congress has expressly granted many administrative entities and because it is inconsistent with the limited authority Congress has vested in bankruptcy courts.").

Finally, the Debtors argue that *dicta* in two Second Circuit decisions indicate a reluctance to use receiverships in lieu of bankruptcy to liquidate and distribute assets to investors and creditors. Automatic Stay Motion at 24-5, citing *SEC v. Am. Board of Trade, Inc.*, 830 F.2d 431, 437 (2d Cir. 1987) and *Eberhard v. Marcu*, 530 F.3d 122 (2d Cir. 2008). Again, this argument is relevant only to the District Court's determination of whether a receiver should be appointed over the Debtors, and not to the applicability of the automatic stay to the District Court Action. Moreover, the Debtors fail to cite to the more recent Second Circuit decision in *SEC v. Malek,* 397 Fed. App'x 711, 715 (2d Cir. 2010), where the Second Circuit stated that "despite our reservations about liquidation occurring through receivership, we have never vacated or modified a receivership order on the ground that a district court improperly attempted to effect a liquidation." (internal citations omitted).

In any event, even if a receiver is appointed in the District Court Action, such appointment would not have the effect of depriving this Court of jurisdiction over the Debtors' assets. Rather, the receiver would merely step into the shoes of management of the Debtors, who will continue to be subject to this Court's jurisdiction. In SEC civil enforcement actions, once the equity jurisdiction of the district court has been properly invoked by a showing of a securities law violation, the court possesses the necessary power to fashion an appropriate remedy. *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972). One of those remedies is the appointment of a receiver. The SEC's proposed order appointing a receiver in the District Court Action [Dkt. # 8-1], provides for the appointment of the receiver as manager of the Debtor and non-Debtor defendants. Specifically, it would appoint the receiver to "[s]olely and exclusively operate and manage the business and financial affairs of the Corporate Defendants," and to "[s]ucceed to all rights and powers of the members, managing members, directors and/or trustees of the Corporate Defendants." *Id.* at p. 3.

In *Adams v. Marwil* (In re Bayou Group, LLC), 564 F.3d 541(2d Cir. 2009), the Second Circuit addressed the effect of appointing a receiver as corporate manager over an entity that subsequently filed for bankruptcy. The Second Circuit held as follows:

> [W]e agree with the district and bankruptcy courts that the Order appointed Marwil to be *both* Bayou's custodian *and* its corporate manager. The Order provided Marwil with two hats – one as custodian, and one as 'sole and exclusive' managing member of Bayou. While Marwil's 'custodian' hat came off upon commencement of the Chapter 11 proceedings, his 'managing member' hat remained. . . .
>
> Marwil's authority to manage the bankruptcy proceedings stems not from his position as 'federal equity receiver' but from the language in the Order specifically appointing Marwil as Bayou's 'sole and exclusive managing member,' thereby vesting him with the authority to file and manage Bayou's bankruptcy proceedings. The district court plainly had authority to place Marwil in a management position from which he could file and manage a Chapter 11 petition.

*Id.* at 548 (emphasis in original). Here, appointment of a receiver would not transfer ownership of any estate assets. Rather, it would merely replace existing management with a fiduciary appointed by the District Court who would then become the management of the Debtors-in-Possession.

## III. The Court Should Not Enjoin The District Court Action Under Section 105 Of The Bankruptcy Code.

If the Court determines that the automatic stay does not apply to the District Court Action, the recently retained professionals purportedly controlling the Debtors nonetheless ask the Court to enjoin that action under Section 105 of the Bankruptcy Code. Automatic Stay Motion at 26-35. In light of the pending motions for appointment of a receiver and a Chapter 11 trustee, which cast doubt on the independence of the professionals, it is questionable whether they are in a position to seek such extraordinary relief, which would effectively forestall an investigation into the Debtors' pre- and post-petition management. However, even if the Court is inclined to consider a Section 105 injunction, it is clear that the Debtors have not met their burden for issuance of such an injunction.

The factors governing the issuance of a preliminary injunction under Section 105 are (1) the likelihood of success on the merits; (2) whether the movant will suffer irreparable harm without the injunction; (3) the harm to others if the injunction is granted; and (4) whether the injunction would serve the public interest. *Am. Film Techs., Inc. v. Taritero (In re Am Film Techs.)*, 175 B.R. 847, 849 (Bankr. D. Del. 1994). As Debtors note, the Third Circuit has recently clarified that the movant must show both a likelihood of success and irreparable harm as "gateway factors" before moving on to the remaining factors. *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017).

Here, the Debtors cannot satisfy their burden for the issuance of a preliminary injunction. First, as discussed above, the Debtors are not likely to prevail on their argument that the automatic stay applies to the District Court Action. Even if the Court were to determine that likelihood of success on the merits includes the likelihood that the Debtors can successfully reorganize, as stated by the Debtors (Automatic Stay Motion at pp. 29-30), there is no evidence that Shapiro's handpicked retained professionals are on the road to a successful reorganization at this early stage of the cases. The CRO has been involved with the Debtors for only two months. Any purported plan to reorganize the Debtors in such a short time most likely was orchestrated by Robert Shapiro with an eye towards preempting the SEC's civil enforcement action.[8] Moreover, in light of the Debtors' cash position and the allegations made by the creditors' committee and the SEC in the motions for appointment of a Chapter 11 trustee and the SEC's allegations in the District Court Action, and the professionals' short tenure, they are not in a position to determine whether a reorganization of these Debtors, whose funding came through fraudulent securities offerings, is the right course here.

Second, the Debtors cannot establish that they will suffer irreparable harm if the injunction is not issued. Currently, the only matter pending in the District Court Action is the District Court's OSC why the District Court Action should not be stayed pending resolution of these bankruptcy cases, which will be heard on January 25. Even if a receiver is appointed at some point in the future, that would not have the effect of threatening the Debtors' assets. As discussed above, the purpose of a receiver is to preserve the assets of the estate. *First Financial*, 645 F.2d at 439 ("The appointment of a temporary receiver, on the other hand, itself serves to prevent dismemberment of the corporate estate by management personnel who have been found

[8] This would be a fact explored more fully in the context of the SEC's and Committee's motions for appointment of a Chapter 11 trustee.

to have acted fraudulently and who could otherwise easily dispose of the assets to the detriment of the debtor's creditors"). The receiver would merely step into the shoes of management of the Debtors.

The Debtors also contend that the appointment of a receiver may result in the immediate termination of the Debtors' debtor-in-possession financing. Even if true, nothing would prevent a receiver from seeking other sources of funding using the Debtors' asset base that supports the current financing.

Third, the SEC and the investing public will be harmed if the injunction issues. Congress specifically excepted police and regulatory actions, such as the District Court Action, from the automatic stay in order to protect the public. If the Court issues the injunction, it will be acting in direct contravention of Congressional intent in enacting Section 362(b)(4). Moreover, issuing the requested injunction will cause harm because it will subject the SEC to two inconsistent orders, one from the District Court requiring a brief on the stay issue by January 15, 2018, and one by this Court enjoining the SEC from doing so.

Finally, the public interest would not be served for the same reasons the SEC and the public will be harmed if the injunction issues.

## CONCLUSION

For all of the foregoing reasons, the SEC requests that the Court deny the Automatic Stay Motion in its entirety, and grant the SEC such other and further relief as is just.

**CERTIFICATION UNDER LOCAL RULE 9013-1(f)**

For purposes of this motion only, the SEC consents to entry of a final order or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment on this motion consistent with Article III of the United States Constitution.

Dated: New York, NY
January 2, 2018

Respectfully Submitted,

/s/ *Neal Jacobson*
Neal Jacobson
Admitted Per L.R. 9010-1(e)(1)

***Counsel for***:

**U. S. SECURITIES AND EXCHANGE COMMISSION**
New York Regional Office
Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281
(212) 336-0095
Jacobsonn@sec.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this second day of January, 2018, a true and correct copy of the foregoing was furnished to all ECF Participants via Notice of Electronic Filing and additionally was served on the following email addresses:

jtullius@tulliuslaw.com
joseph.argentina@dbr.com
Patrick.jackson@dbr.com
Steven.Kortanek@dbr.com
James.lundy@dbr.com
James.miller@dbr.com
Matthew.silverman@azag.com
parrow@buchalter.com
wbrody@buchalter.com
delillo@rlf.com
knight@rlf.com
rwolf@hollandhart.com
stuart.brown@dlapiper.com
elan.gershoni@dlapiper.com
eric.goldberg@dlapiper.com
ryan.oquinn@dlapiper.com
rlevy@pryorcashman.com
slieberman@pryorcashman.com
mphillips@mgmlaw.com
ajcurrie@venable.com
jledmonson@venable.com
crobinson@pszjlaw.com
bsandler@pszjlaw.com
jstang@pszjlaw.com
timothy.fox@usdoj.com
ppascuzzi@ffwplaw.com
rpachulski@pszjlaw.com
jpomerantz@pszjlaw.com
ogarza@gibsondunn.com
mkelsey@gibsondunn.com
amielke@ycst.com
snowman@gibsondunn.com
mporcelli@gibsondunn.com
ewise@gibsondunn.com
Andrew.warner@usdoj.com

/s/ Neal Jacobson