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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

2002 JUL -8 P 4: 21
AZ CORP COMMISSION
DOCUMENT CONTROL

In the Matter of:

BRIAN BAMMAN
14101 E. Andrew Drive
Fountain Hills, Arizona 85268

BAMEX INTERNATIONAL, LTD.,
1221 E. Osborn Rd., #105
Phoenix, Arizona 85014

DOCKET NO. S-03391A-02-0000

MOTION TO STAY
Arizona Corporation Commission
DOCKETED

JUL - 8 2002

Respondents.

DOCKETED BY: *CM*

Respondents Bamex International, Ltd. and Brian Bamman move to stay this proceeding pending the outcome of the appeal in *Eastern Vanguard Forex, Ltd, et al. v. Arizona Corporation Commission*, Court of Appeals Case No. CV01-0476.

This matter involves trading in off-exchange foreign currency futures. Respondents allege that the ACC is pre-empted from regulating these transactions by the Treasury Amendment to the Commodity Exchange Act ("CEA"). In 2000, the Commission entered an Order in the *Forex Investment Services, et al.* matter, Docket No. S-03177A-98-0000 ("FISC"), which also involved trading in off-exchange foreign currency futures. The Respondents therein claimed that the ACC lacked jurisdiction over these instruments because of the Treasury Amendment. The ACC held that it had jurisdiction, and the Respondents therein appealed that ruling to the Maricopa County Superior Court, which also denied relief.¹ The relevant FISC Respondents have filed a cross-

¹ The court reversed and vacated the ACC's Order as it pertained to six alleged control people. The court awarded attorneys' fees to those Respondents. These rulings are also on appeal.

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1 appeal in the Arizona Court of Appeals regarding the jurisdictional issue. The briefing in the
2 Court of Appeals closed on April 9, 2002. The court granted oral argument, which has not yet
3 been scheduled.

4 Because the jurisdictional issue is in the Court of Appeals, counsel cannot presently advise
5 his clients to seek to resolve this matter and thereby waive a claim that the ACC lacks jurisdiction
6 herein. Because the jurisdictional issue is pending in the Court of Appeals and because the United
7 States Supreme Court and the Ninth Circuit Court of Appeals have previously held that the CFTC
8 cannot regulate off-exchange foreign currency trading, Respondents respectfully request that the
9 ACC stay this matter pending the resolution of the FISC matter.
10

11 Neither the ACC nor the investors in this matter will be prejudiced by the delay. Rather,
12 the Securities Division began investigating this matter in 1999, but did not file the Notice until
13 2002, three years later. Further, this case does not involve allegations of investors' funds being
14 misappropriated. The investors' funds were allegedly lost through trading losses, and were not
15 stolen. None of the parties will be prejudiced by further delay.
16

17 Respondents respectfully request that the ACC stay this matter pending the outcome of the
18 FISC appeal. This Motion is filed in good faith and not for purposes of delay.
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1 RESPECTFULLY SUBMITTED this 8th day of July, 2002.

2 ROSHKA, HEYMAN & DeWULF, PLC

3
4 By 

5 Alan S. Baskin, Esq.
6 One Arizona Center
7 400 East Van Buren Street, Suite 1000
8 Phoenix, Arizona 85004
9 Attorneys for Petitioners

10 ORIGINAL and ten copies of the foregoing
11 hand-delivered this 8th day of July, 2002 to:

12 Docket Control
13 Arizona Corporation Commission
14 1200 West Washington Street
15 Phoenix, AZ 85007

16 COPY of the foregoing hand-delivered
17 this 8th day of July, 2002 to:

18 Mark Sendrow
19 Director of Securities
20 Securities Division
21 Arizona Corporation Commission
22 1300 W. Washington Street, 3rd Floor
23 Phoenix, AZ 85007

24 Marc E. Stern
25 Hearing Division
26 Arizona Corporation Commission
27 1200 W. Washington Street
Phoenix, AZ 85007

COPY of the foregoing mailed
this 8th day of July, 2002 to:

Moira McCarthy
Assistant Attorney General
Arizona Attorney General's Office
1275 W. Washington Street
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Mark Dinell
Securities Division
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