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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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WILLIAM A. MUNDELL
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JIM IRVIN
Commissioner
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Commissioner

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In the matter of:)	DOCKET NO. S-03391A-02-0000
)	
BRIAN BAMMAN)	OPPOSITION OF THE SECURITIES
14104 E. ANDREW DRIVE)	DIVISION TO RESPONDENTS'
FOUNTAIN HILLS, ARIZONA 85268)	MOTION TO STAY
)	
BAMEX INTERNATIONAL, LTD.,)	
1221 E. OSBORN RD., #105)	
PHOENIX, ARIZONA 85014)	
)	
Respondents.)	

RESPONDENTS BRIAN BAMMAN and BAMEX INTERNATIONAL, LTD. (collectively "Respondents") request that the Hearing Division issue an order staying this proceeding pending a final appellate decision in an entirely separate case. As Respondents provide no good cause for such delay, the motion should be denied.

Respondents ask for the stay as they allege one of the issues in this case will be whether the Arizona Corporation Commission's ("Commission") jurisdiction over investments in foreign currency transactions is preempted by the Commodity Exchange Act ("CEA"), 7 U.S.C. § 1 et seq. They state that a similar issue exists in a case pending before the Arizona Court of Appeals. *Eastern Vanguard Forex Ltd. v. Arizona Corporation Commission*, Court of Appeals Case No, CV01-0476. What they ignore is that the Commission, and every other court in Arizona that has

1 considered this issue, has found Respondents' preemption argument to be without merit.¹ See
2 e.g., *In the Matter of Forex Investment Services Corp., et al.*, Arizona Corporation Commission
3 Case No. S-03177-98-0000, Decision No. 62494 (Commission has jurisdiction over investments
4 in foreign currency); *In the Matter of Global Harvest Corp., et al.*, Arizona Corporation
5 Commission Case No. S-03424A-00-0000, Decision No. 63318 (Similar finding in consent
6 order.) Without dispute, the Commission has already determined that it has jurisdiction to
7 regulate investments in foreign currency trading. Thus, as the Commission has already ruled on
8 this argument and found against Respondents' position, unless it is overturned by higher
9 authority this determination is binding. Therefore, there is no basis to stay this hearing.
10

11 Even if the Commission had not already ruled, Respondents give no reason to delay this
12 proceeding for the length of time to receive a final ruling in the *Eastern Vanguard* case. As they
13 admit, the Court of Appeals has not even scheduled oral argument in the case, much less reached
14 a decision. That can take over a year. This assumes that the Court of Appeals will even choose
15 to rule on the preemption issue. After that, it is possible one of the parties will appeal to the
16 Supreme Court or further. That could take another year or more. Respondents give little reason
17 why the investors should have to wait that long before being granted recovery.
18

19 The only reason Respondents give for the delay is that their "counsel cannot presently
20 advise his clients to seek to resolve this matter and thereby waive a claim that the ACC lacks
21 jurisdiction herein." Motion to Stay, at 2. That is scarcely an adequate reason to ask this matter
22

23
24 ¹ Respondents claim that U.S. Supreme Court and Ninth Circuit decisions support their argument. However,
25 the issue in those cases, as Respondents well know, was a question of the Commodity Futures Trading Commission's
26 jurisdiction, not that of a state securities regulator. See *Dunn v. Commodity Futures Trading Commission*, 519 U.S.
465, 117 S. Ct. 913 (1997); *Commodity Futures Trading Commission v. Frankwell Bullion Ltd.*, 99 F.3d 299 (9th Cir.
1996). No court has held a state securities regulator barred by the CEA from enforcing its securities laws regarding
trading in foreign currency transactions.

1 be delayed for years. Even assuming that this is a disputed area of law, which the Division
2 certainly disagrees, lawyers frequently are called upon to advise their clients on settlement
3 without being able to definitively advise their client of the final outcome of the case.
4 Respondents give no reason why this case should be treated any differently.

5 As the Commission has already ruled against Respondents' position and since
6 Respondents provide no good cause for entry of a stay, the Division respectfully requests the
7 Hearing Division to deny the motion.

8
9 Dated this 15th day of July, 2002

10 JANET NAPOLITANO
11 Attorney General
12 Consumer Protection & Advocacy Section

13 BY: 

14 MARK DINELL
15 Special Assistant Attorney General
16 MOIRA A. MCCARTHY
17 Assistant Attorney General
18 Attorneys for the Securities Division of
19 The Arizona Corporation Commission

20 ORIGINAL AND TEN (10) COPIES of the foregoing
21 filed this 15th day of July, 2002, with:

22 Docket Control
23 Arizona Corporation Commission
24 1200 West Washington
25 Phoenix, AZ 85007

26 COPY of the foregoing mailed this
15th day of July, 2002, to:

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