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BEFORE THE ARIZONA CORPORATION

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AZ CORP COMMISSION
DOCKET CONTROL

2016 SEP -7 P 4: 38

COMMISSIONERS

DOUG LITTLE, Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

In the matter of:

CONCORDIA FINANCING COMPANY, LTD,
a/k/a "CONCORDIA FINANCE,"

ER FINANCIAL & ADVISORY SERVICES,
LLC,

LANCE MICHAEL BERSCH, and

DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,

Respondents.

Docket No. S-20906A-14-0063

**ER RESPONDENTS' MOTION TO
CONTINUE HEARING**

Arizona Corporation Commission

DOCKETED

SEP 07 2016

DOCKETED BY

SNELL & WILMER

Respondents ER Financial & Advisory Services, LLC¹, Lance Michael Bersch, David John Wanzek, and Linda Wanzek (the "ER Respondents") move to continue the hearing scheduled in this matter. The 20th Procedural Order in this docket sets a hearing to begin November 28, 2016, continuing through December 23, 2016. The ER Respondents note that this scheduled hearing was used as the basis for the Securities Division's Motion to Continue Hearing Date filed on August 31, 2016 in the Robert J. Moss case, Docket S-20953A-16-0061. In that filing, counsel for the Division explained that the new schedule in the Moss case would not allow sufficient time for the Division to prepare for the hearing in this case, which the Division expects to be "hard-fought and will require several weeks for counsel to adequately prepare." Due to this scheduling conflict, the Division seeks to reschedule the Moss hearing for a date "in early 2017". On September 6, 2016, counsel for certain respondents in the Moss case

¹ To the extent it has continued existence and the capacity to be sued.

1 filed a response noting they would not be available in January 2017 but could accommodate
2 February 2017.

3 The ER Respondents believe that given the conflict between these two hearings, if a
4 hearing is to be continued, it should be the hearing in this case. There are several reasons this
5 case is more suitable for delay.

6 First, delay is warranted due to the Petition for Review regarding this docket pending in
7 the Arizona Supreme Court in Arizona Supreme Court Docket CV-16-0150-PR. The Petition for
8 Review addresses Statute of Limitations and due process issues that could be case dispositive,
9 eliminating the need for a hearing. As the Division noted, preparing for a hearing in this case
10 will take considerable time. This is also true for the Respondents. If this case is delayed, and the
11 Court agrees with the ER Respondents, then considerable time and expense will be avoided. In
12 contrast, there does not appear to be any prospect of such savings if the Moss case is delayed.

13 Second, the ER Respondents may move that the Arizona Supreme Court stay the hearing
14 in this case, to give the Court time to consider the Petition for Review. Thus, if the Commission
15 chooses to delay the Moss case rather than this case, both cases could end up delayed.

16 Third, the allegations in the Moss case indicate ongoing activities, bringing a greater need
17 to act quickly. Many of the factual allegations are "Since at least 2012" or similar (Moss Notice
18 of Opportunity, ¶¶ 23, 25, 30, 113, 117), and the Notice included a temporary cease and desist
19 order. Given the recent and allegedly ongoing activity in that case, it is more important to reach
20 a final conclusion and enter a final order (including a permanent cease and desist) in the Moss
21 case, than it would be to complete this proceeding, which concerns actions that the Division
22 concedes stopped many years ago. Further, according to the Division's allegations in the Moss
23 case, investors there have received little or nothing from their investments. (Moss Notice of
24 Opportunity, ¶¶ 22, 53, 101-103, 109). In contrast, in this case, the Division alleges that overall
25 Concordia paid out more to investors than it paid in. (Amended Notice, ¶ 62). With the Moss
26 investors receiving so little, their case is more pressing in terms of getting restitution obligations
27 in place.

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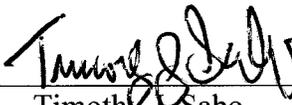
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Fourth, the Moss case presents the opportunity to have a hearing with relatively fresh recollections. That simply will not be possible in this docket, given that the Division’s allegations span from February 1998 to July 2008.

The Moss case presents recent, serious, and allegedly ongoing acts, where investors have recovered little—a far cry from this case. And there is the possibility of either a substantive ruling or a stay from the Arizona Supreme Court in this docket. Thus, the ER Respondents believe that this case is the case that should be delayed.

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RESPECTFULLY SUBMITTED this 7th day of September 2016.

By 
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Original + 13 copies of the foregoing
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