

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4524/January 13, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17674

In the Matter of

ALEXANDER KON

ORDER ON MOTION FOR
INTERLOCUTORY REVIEW

On January 11, 2017, Respondent moved for interlocutory review of my order denying his motion seeking my withdrawal and denying in part his motion for judgment on the pleadings, both of which were based on the Appointments Clause of Article II of the Constitution. *Alexander Kon*, Admin. Proc. Rulings Release No. 4501, 2017 SEC LEXIS 27 (ALJ Jan. 5, 2017).

The motion appears to be directed to the Commission, which may grant a party's petition for interlocutory review or order review on its own motion at any time, although "petitions for interlocutory review are 'disfavored' and will be granted only in 'extraordinary circumstances.'" *Gary L. McDuff*, Exchange Act Release No. 78066, 2016 SEC LEXIS 2121, at *19 (June 14, 2016); 17 C.F.R. § 201.400(a).

It is unclear what relief, if any, Respondent requests from me. To the extent Respondent requests that I certify my ruling for interlocutory review under Rule of Practice 400(c), 17 C.F.R. § 201.400(c), I DENY the motion. Under Rule 400(c), I "shall not certify a ruling [for interlocutory review] unless . . . the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion[,] and an immediate review of the order may materially advance the completion of the proceeding." 17 C.F.R. § 400(c)(2)(i), (ii). That standard is not met here. The Commission has made clear that it finds no merit to the contention that its administrative law judges should have been appointed in a manner consistent with the Appointments Clause. *Harding Advisory LLC*, Securities Act Release No. 10277, 2017 SEC LEXIS 86, at *67-69 & n.82 (Jan. 6, 2017). Respondent has provided no reason why the Commission might rule otherwise in this proceeding, the Tenth Circuit Court of Appeals' decision in *Bandimere v. SEC*, No. 15-9586, --- F.3d ---, 2016 WL 7439007 (10th Cir. Dec. 27, 2016), notwithstanding.

Cameron Elliot
Administrative Law Judge