



Per Judge Patil's Order dated January 12, 2018, I am also including an updated disclosure of my assets that continue to demonstrate my inability to pay any disgorgement.

## RESPONSE

### **The Division alleges that I concealed material information about my financial situation.**

The Division provides information on the purchase of a house in December 2015 as evidence that my wife and I had assets that I should have disclosed.

What the Division fails to communicate is that my wife and I borrowed 100% of the money used to purchase that home. We thus have zero equity in that house. It is not an asset to us. Form DA states that "The respondent filing this form is required promptly to notify the Commission of any material change in the answer to any question on this form." 17 C.F.R. § 209.1(b). I was not aware of the requirement to keep updating my financial situation and as I have no counsel representing me, I did not benefit from being informed that way either. However, as demonstrated here, the purchase of this house did not have a 'material' effect on our financial situation. In fact, it actually deteriorates our ability to pay any disgorgement as it does not represent a net asset to us and actually causes our monthly cash outlays to increase. We did not have a choice, however, as we could not indefinitely continue living at my father's house and abusing his hospitality.

My wife and I had been trying for a while to move out of my father's house and tried numerous times to qualify for a mortgage but were unsuccessful due to [REDACTED] position. My father, A. Stephen Clug, also wanting to help us get out of his house ended up borrowing the money himself and in turn lending us the money. We agreed to pay him back as soon as possible and cover the monthly interest in the interim. We have been indeed paying that

interest since the purchase. We [REDACTED] per month which initially covered the interest on that loan but with a flexible interest rate that has gone up is now slightly less than the interest owed. We do not have any positive equity in this house as it was 100% financed. If we were to sell the house today, we would have to come up with additional cash to cover repayment of the loan, commissions, taxes and fees. We have a signed agreement, giving my father a first priority interest, that covers what we owe him and agreed that the house will belong to him should anything happen to us while we still owe him any money on the house. We agreed that as soon as we can refinance and qualify for a mortgage on the house, that we will do so and pay back his loan in full.

In support of my response above, I am providing the following:

1. Copy of the wire instructions showing that the funds for the purchase of the house were wired from my father's account at Morgan Stanley, which was opened specifically for this purpose, to the Title company escrow account. Note that both the initial deposit for the house of [REDACTED]3 [REDACTED] plus fees) and the balance owed of [REDACTED] ([REDACTED] plus fees) were both transferred out of my father's Morgan Stanley account. Both amounts are highlighted in the statement. See Exhibit 1.
1. Copies of my and my wife's joint bank account statements showing the monthly [REDACTED] payments, highlighted in statements, that are made to my father's Morgan Stanley account. Note that due to this Administrative Proceeding Citibank closed all our bank accounts in August 2016, and credit cards in October 2016, and we thus had to move our bank accounts to TD Bank. See Exhibit 2.
2. Copy of my father's wire instructions to Morgan Stanley to wire funds to Title company escrow account for balance owed on the house purchase. See Exhibit 3.

3. Copies of statements for Morgan Stanley account showing receipt of the [REDACTED] payments, highlighted in the statements, we pay each month to the account. See Exhibit 4.
4. Copies of the automatic monthly [REDACTED] payment setup instructions, initially out of our Citibank account, and then out of our TD Bank account. See Exhibit 5.
5. Copy of the signed Agreement between my wife and me, and my father giving him a first priority interest to the house and any proceeds should it be sold or refinanced while there is any balance due to him. See Exhibit 6.

### **My Continued Inability to Pay Disgorgement**

Unfortunately, my and my wife's [REDACTED] has not much improved since the last time I submitted my financial information to the Commission. The stigma caused by this SEC action continues to hang over me and has made finding work for which my experience qualifies me very difficult, to say the least. Headhunting agencies will not work with me and several opportunities that were offered verbally to me were soon put on indefinite hold when I told them about this SEC action. [REDACTED] [REDACTED]

[REDACTED]. I have recently found a position helping someone with his start-up company. I initially worked for no pay as it was the only work I could find and eventually began receiving monthly payments of [REDACTED] which were then [REDACTED]. My concerns regarding this SEC action continue to weigh over me as the CEO and founder of the company has stated that until my SEC issues are positively resolved he will not be able to promote me. This is also an early stage start-up with limited funding and no revenues which also entails much risk. See Exhibit 7 for a summary

statement of my assets, liabilities, and cash flow. See Exhibit 8 for the remaining supporting financial documents.

I respectfully request that the Court keeps Confidential and does not make public these supporting documents as they disclose confidential banking and financial information that could be used for nefarious purposes. I understand that Judge Patil has ordered that this submission be subject to the protective order entered at the hearing.

### **The Ratification Process**

I respectfully request that the Court dismiss all of its prior rulings and decisions in this case. I reserve my right to seek further review before the Commission of any ratified decision or issue in any aspect of the decision that is adverse to me. For financial reasons I am unable to be represented by counsel, so I cannot offer much legal argument on the Ratification Process. However, from a common-sense point of view, how does simply issuing an order to ratify the prior appointment of its administrative law judges to preside over administrative proceedings fix the underlying constitutional issue? The underlying issue that an unconstitutionally appointed Administrative Law Judge presided and made decisions on my case does not go away by having the same Commission that hired him simply state that there is no longer an issue. The 'ratification' of an unconstitutional procedure is itself a nullity. The Commission's effort to retroactively convert what it has admitted was a constitutionally infirm delegation of hiring authority into a constitutionally permissible appointment process would not be a ratification of the commission's prior acts but rather a mischaracterization of

those acts. A ratification can confirm that an apple is an apple but it cannot transform an apple into an orange.<sup>3</sup>

I also do not understand how the Judge that presided over my case will be the same person to review the case, i.e. his own work. Will he look at the information and arguments I made in my appeals? It appears to me that there is a conflict for the same Judge to be reviewing and possibly changing some of his own conclusions and decisions. If changes are made would it not be in some way a criticism of his own earlier work, something people are naturally averse to doing?

### CONCLUSION

I respectfully request that the Court, based on the information I have provided here, dismiss in full the Division's request that the Court withdraw its findings on my inability to pay and impose a civil penalty. I also continue to assert my inability to pay any disgorgement as clearly demonstrated in my financial disclosures.

Dated: January 29, 2018

Respectfully submitted,

By:  \_\_\_\_\_

Alexandre S. Clug

### CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2018, I served a copy of this Petition by fax and mail to the Commission's Secretary, Office of Administrative Law Judges, U.S. Securities and

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<sup>3</sup> From **Hughes Hubbard & Reed** and **Boies Schiller Flexner** in a brief for RD Legal Funding

Exchange Commission, 100 F Street, NE, Mail Stop 1090, Washington, DC 20549, and a true and correct copy of the foregoing was furnished via Electronic Delivery to:

Office of the Administrative Law Judges at [alj@sec.gov](mailto:alj@sec.gov)  
Honorable Judge Jason S. Patil at [Patilj@sec.gov](mailto:Patilj@sec.gov)  
David Stoelting at [StoeltingD@sec.gov](mailto:StoeltingD@sec.gov)