



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

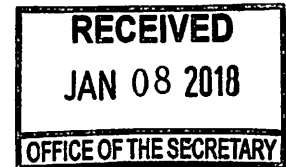
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January 5, 2018

VIA EMAIL and UPS Overnight

The Honorable James E. Grimes
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, NE
Mail Stop 1090
Washington, DC 20549



Re: In the Matter of John Briner, Esq., et al., Admin. Proc. File No. 3-16339

Dear Judge Grimes:

Pursuant to the Court's December 6, 2017 Order – regarding the parties' submission of potential new evidence in this matter, or a brief addressing whether the Court should "ratify or revise in any respect" any action that it has taken in this proceeding – the Commission respectfully submits this letter and enclosed proposed Order. The Division is submitting no additional evidence, and we submit this letter brief solely to address why the Court should ratify its prior actions in this proceeding, including its September 18, 2015 Initial Decision against respondent Diane Dalmy.

On November 30, 2017, the Securities and Exchange Commission ("Commission") issued an order ratifying the prior appointment of its administrative law judges to preside over administrative proceedings. *See In re: Pending Administrative Proceedings*, Securities Act Release No. 10440 (Nov. 30, 2017). As applied to this proceeding, the order directs the administrative law judge to determine, based on a *de novo* reconsideration of the full administrative record, whether to ratify or revise in any respect all prior actions taken by any administrative law judge during the course of this proceeding. *Id.* at 1-2.

It is well established that subsequent ratification of an earlier decision rendered by an unconstitutionally appointed officer remedies any alleged harm or prejudice caused by the violation. *See Doolin Sec. Sav. Bank, F.S.B. v. Office of Thrift Supervision*, 139 F.3d 203, 213-14 (D.C. Cir. 1998); *FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 707-09 (D.C. Cir. 1996). And that principle applies whether or not the ratifying authority is the same person who made the initial decision, so long as "the ratifier has the authority to take the action to be ratified," and, "with full knowledge of the decision to be ratified," makes a "detached and considered affirmation of th[at] earlier decision." *Advanced Disposal Services East, Inc. v. NLRB*, 820 F.3d 592, 602-03 (3d Cir. 2016).

Accordingly, to implement this remedy, the administrative law judge should conduct a *de novo* review of the administrative record, engage in an independent evaluation of the merits through the exercise of detached and considered judgment, and then determine whether prior actions should be ratified and thereby affirmed. This process ensures "that the

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ratifier does not blindly affirm the earlier decision without due consideration.” *Advanced Disposal Services East*, 820 F.3d at 602-03.

The Division submits that the previous decisions issued by the Administrative Law Judge in this proceeding – including the initial decision regarding respondent Diane Dalmy issued on September 18, 2015 – were well-founded, and we respectfully request that they be ratified. To that end, the Division attaches a proposed draft order.

Respectfully submitted,



Jack Kaufman
Senior Trial Counsel
Division of Enforcement

cc: Diane Dalmy, Esq. (*pro se* respondent)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Administrative Proceedings Rulings
Release No.

ADMINISTRATIVE PROCEEDING
File No. 3-16339

In the Matter of

JOHN BRINER, ESQ.,
DIANE DALMY, ESQ.,
DE JOYA GRIFFITH, LLC,
ARTHUR DE JOYA, CPA,
JASON GRIFFITH, CPA,
CHRIS WHETMAN, CPA,
PHILIP ZHANG, CPA,
M&K CPAS, PLLC,
MATT MANIS, CPA,
JON RIDENOUR, CPA, and
BEN ORTEGO, CPA,

Respondents.

[PROPOSED] RATIFICATION ORDER

After a *de novo* review and reexamination of the record in these proceedings, I have reached the independent decision to ratify and affirm all prior actions made by an administrative law judge in these proceedings, including the initial decision regarding respondent Diane Dalmy issued on September 18, 2015. This decision to ratify and affirm is based on my detached and considered judgment after an independent evaluation of the merits.

James E. Grimes
Administrative Law Judge