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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

TRACI J. ANDERSON, CPA,
TIMOTHY W. CARNAHAN
AND CYIOS CORPORATION,

Respondents.

DOE'S BRIEF IN RESPONSE TO
RESPONDENTS' REPLY BRIEF AND IN
SUPPORT OF RATIFICATION OF ALL
PRIOR ACTIONS

On November 30, 2017, the 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.e

On December 14, 2017,¹ in response to the Commission's order, the Court set a briefing schedule under which Respondents could "submit [. . .] any new evidence they deem relevant to reexamination of the record." A.P. Rulings Rel. No. 5384. On January 5, 2018, Respondents submitted their "Reply Brief to: Release No. 5384 / December 14, 2017 Telephonic Conference" (internal quotes omitted). That brief contains no new evidence.² Instead, it addresses only perceived procedural defects.³

The Court should ratify its earlier decisions in this proceeding. 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

¹ The Court held a telephonic conference regarding the Commission's order on the same day.

² In addition to not offering any evidence, the Respondents also fail to identify any challenged rulings, findings, or conclusions—as required by the Court's December 14, 2017 order.

³ The Respondents' arguments are generally indecipherable. In any event, they are neither valid nor germane to the Commission's order or the Court's reexamination of the record.

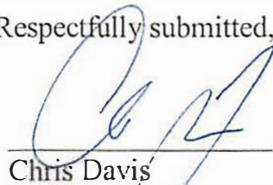
ratified,” makes a “detached and considered affirmation of th[at] earlier decision.” *Advanced Disposal Services East, Inc. v. NLRB*, 820 F.3d 592, 602-03 (3d Cir. 2016).

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 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 an administrative law judge in this proceeding, including the initial decision issued on December 21, 2015, were well-founded and respectfully requests that they be ratified. Given the opportunity, the Respondents have offered no new evidence at all—much less any evidence calling those decisions into question. To that end, the Division attaches a proposed draft order to this letter.

Dated: January 10, 2018

Respectfully submitted,



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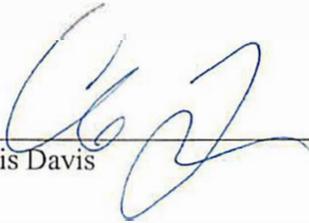
Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the forgoing Letter Re. Ratification was served on the following on January 10, 2018— via United Parcel Service, Overnight Mail:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

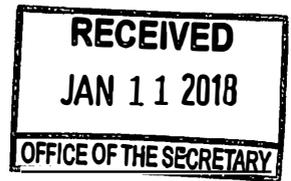
Honorable Cameron Elliot
Administrative Law Judge
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ORDER

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 issued on December 21, 2015. This decision to ratify and affirm is based on my detached and considered judgment after an independent evaluation of the merits.

Cameron Elliott
Administrative Law Judge