UNITED STATES
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Via Email and UPS Overnight Delivery

Hon. Jason S. Patil
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, NE
Mail Stop 1090
Washington, DC 20549

Re: Matter of RD Legal Capital, LLC, et al. File No. 3-17342

Dear Judge Patil:

We write in response to Respondents' supplemental letter seeking dismissal of the case based on their constitutional objections to administrative proceedings. None of Respondents' arguments in support of dismissal has merit. These proceedings should continue pursuant to the process set forth in the Commission's November 30 Order in *In re: Pending Administrative Proceedings* that ratified the appointment of administrative law judges.

First, Respondents (at 2) erroneously contend that dismissal is warranted because "any ratification does not cure the harm Respondents have *already* been subjected to by being forced to participate in an unconstitutional proceeding." That argument ignores the entire purpose of the ratification doctrine. Ratification is the "[c]onfirmation and acceptance of a previous act, thereby making the act valid from the moment it was done." *Black's Law Dictionary* (10th ed. 2014). It allows a properly appointed adjudicator to revisit an earlier action and decide whether to "reach[ ] the same conclusion" as the prior, purportedly infirm decisionmaker. *Intercollegiate Broad. Sys., Inc. v. Copyright Royalty Bd.*, 796 F.3d 111, 121 (D.C. Cir. 2015); *see also, e.g., id.* at 118-19; *CFPB v. Gordon*, 819 F.3d 1179, 1192 (9th Cir. 2016) ("Because the CFPB had the authority to bring the action at the time Gordon was charged, Cordray's August 2013 ratification, done after he was properly appointed as Director, resolves any Appointments Clause deficiencies."), *cert. denied*, 137 S. Ct. 2291 (2017). Even where a party was previously subject to a proceeding before an officer not appointed in conformance with the Appointments Clause, subsequent ratification of earlier decisions remedies any alleged harm. *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).

Accordingly, Respondents' request for dismissal is meritless even assuming that administrative law judges are inferior officers. The November 30 Order ratified the appointment of the Commission's administrative law judges and provided a mechanism for them to review and determine whether to ratify prior actions in pending cases. In this case, the ratification

process renders any purported error harmless. Indeed, Respondents' contrary view would turn the ratification doctrine on its head by precluding the ratification of prior decisions on the theory that merely participating in prior administrative proceedings resulted in some form of incurable harm. Respondents have not cited a single case adopting such an extreme position.

Second, Respondents claim (at 2) that the Commission's November 30 Order "is ineffective because it does not even address the admitted violation of the Vesting Clause." In other words, Respondents claim that the tenure protections for administrative law judges are unconstitutional pursuant to the Vesting Clause. This challenge is equally without merit. At the outset, Respondents (at 2) are incorrect that "the SEC now concedes" that the removal procedures for administrative law judges are unconstitutional. Indeed, *Timbervest, LLC*, Advisers Act Release No. 4197, 2015 WL 5472520, at *26-28 (Sept. 17, 2015), forecloses Respondents' argument that the manner of removing administrative law judges is unconstitutional. In *Timbervest*, the Commission cited three grounds for distinguishing the method of removing administrative law judges from the method of removing members of the PCAOB, which was found unconstitutional in *Free Enterprise Fund v. PCAOB*, 561 U.S. 477 (2010), because it committed substantial executive authority to officers protected by two lawyers of for-cause removal. *Timbervest,* 2015 WL 5472520, at *28. First, administrative law judges "are 'unlike members of the [PCAOB]' insofar as they 'perform adjudicative rather than enforcement or policymaking functions'—and [have] limited adjudicative power at that." *Id.* at *27 (quoting *Free Enterprise Fund*, 561 U.S. at 507 n.10). Second, whereas the PCAOB had "'significant independence'" and broad authority to regulate firms and associated persons "'without Commission preapproval or direction,'" "every" decision made by Commission ALJs can be revisited in the course of the Commission's de novo review and the Commission is not "even required to delegate functions to ALJs in the first place." *Id.* (quoting *Free Enterprise Fund*, 561 U.S. at 504-05). Finally, "unlike the structure of the PCAOB, the ALJ system is not novel and has been in place for over 70 years." *Id.* at *28.

The Commission's decision to ratify the appointment of its ALJs does not disturb any of the grounds for rejecting the Vesting Clause argument in *Timbervest*. The Commission decided to ratify ALJs' appointment and give them the opportunity to reconsider the record and determine, based on such reconsideration, whether to ratify or revise in any respect all prior actions taken by an administrative law judge in this proceeding. Nothing in the Commission's November 30 Order changes the ALJs' adjudicative function, the scope of their authority, or the history of their use.

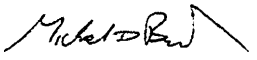
Finally, Respondents' undeveloped procedural and substantive due process arguments (at 2) also fail. Respondents identify no cognizable harm from the November 30 Order, which affords Respondents more process by allowing but not requiring them to submit further evidence and is the first step in curing any purported defect in the process.[1] Moreover, the November 30 Order does not direct the reopening of an already completed proceeding; administrative

[1] If, by this argument, Respondents were indicating a willingness to expedite the review process by having the parties waive their right to file submissions, the Division would not oppose such a request.

proceedings are not complete until jurisdiction transfers to a federal court of appeals or the time to appeal has run. Nor does the November 30 Order's tolling of timelines raise any procedural or substantive due process concerns. The Commission is authorized by regulation to extend deadlines, *see* Rule 161(a), and also has express authority to "allow the submission of additional evidence" through remand, *see* Rule 452. Respondents identify no reason to question the validity or application of those rules here.

In sum, Respondents have cited no basis for dismissal and this proceeding should continue in accordance with the procedures set forth in the Commission's November 30 Order.

Respectfully submitted



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