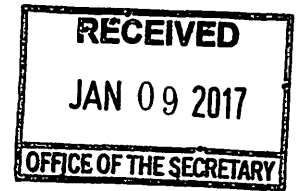


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-17674

**In the Matter of**

**ALEXANDER KON,**

**Respondent.**

**MOTION TO AMEND ANSWER**

NOW COMES Counsel for the above-mentioned Respondent to respectfully request that he be granted the opportunity to amend his previously filed Answer dated December 21, 2016. This request is filed per Rule 220(e) which states: "A respondent may amend its answer at any time by written consent of each adverse party or with leave of the Commission or the hearing officer. Leave shall be freely granted when justice so requires." 17 CFR 201.220(e).

In support of this Motion, relevant new case law was published by the 10<sup>th</sup> circuit on December 27, 2016. See *Bandimere v. U.S. Securities and Exchange Commission*, 10th U.S. Circuit Court of Appeals, 15-9586 December 27, 2016. In *Bandimere*, the 10<sup>th</sup> Circuit holds that SEC Administrative Law Judges ("ALJ") are appointed in violation of the appointments clause of the U.S. Constitution. In particular, SEC ALJs are classified as "inferior officers"

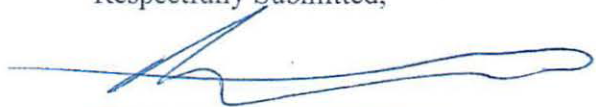
rather than “employees” and must be constitutionally appointed. *Id.* at 30. Further, the SEC ALJ’s decision in *Bandimere* was set aside as the ALJ was not constitutionally appointed.<sup>1</sup>

In light of the *Bandimere* decision, Respondent in this matter respectfully requests that he be granted the opportunity to amend his answer to include the affirmative defense of this violation of Article II of the United States Constitution. The SEC ALJ was not appointed by the President, a department head, or the Judiciary. Because he was not appropriately appointed pursuant to Article II, his appointment is unconstitutional in violation of the Appointments Clause.

Wherefore, Counsel requests that this Motion to Amend Respondent’s previously filed answer be granted in the interest of justice.

Respectfully Submitted,

January 3, 2017



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Feinstein Law, P.C.  
[REDACTED]  
Sequim, Washington [REDACTED]

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<sup>1</sup> The Administrative Law Judge who presided in the initial *Bandimere* decision is ALJ Cameron Elliot, the same ALJ appointed in this matter. The various penalties sought by the Commission in *Bandimere* were almost exactly the same as here.

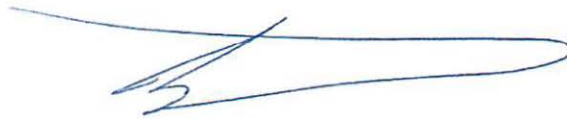
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## CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing Motion to Amend Answer and supporting documentation were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by U.S. Mail and email, on this 3<sup>rd</sup> day of January, 2017, on the following persons entitled to notice:

Honorable Cameron Elliot  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E. Room 2557  
Washington, D.C. 20549  
(also via email to [alj@sec.gov](mailto:alj@sec.gov))

Russell Koonin, Esq.  
Senior Trial Attorney  
Division of Enforcement  
Securities and Exchange Commission  
801 Brickell Avenue, Suite 1800  
Miami, FL 33131  
(also via email to [kooninr@sec.gov](mailto:kooninr@sec.gov))



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Todd Feinstein