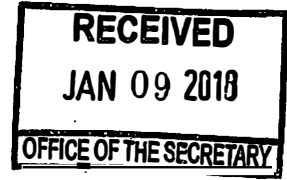


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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
200 Vesey Street, Suite 400
NEW YORK, NY 10281-1022



WRITER'S DIRECT DIAL
LINE
(212) 336-0077
gizzip@sec.gov

January 5, 2018

Via Email

Hon. James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Matter of Martin Shkreli*, Admin. Proc. File No. 3-18127

Dear Judge Grimes:

We represent the Division of Enforcement in this matter. 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.

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 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 should be ratified. To that end, the Division attaches a proposed draft order to this letter.

The Honorable James E. Grimes

January 5, 2018

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The Division reserves its right to seek further review before the Commission of any ratified decision or issue in a decision that is adverse to the Division.¹

Respectfully submitted,

/s/ Paul G. Gizzi

/s/ Eric M. Schmidt

Paul G. Gizzi

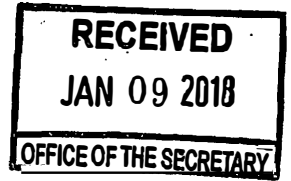
Eric M. Schmidt

Attachments

Cc: Benjamin Brafman, Esq. and Andrea Zellan, Esq.
Counsel for Respondent

¹ For example, the Division will be respectfully seeking, in a separate filing, the Court's reconsideration of whether Respondent was associated with an investment adviser during the period of the conduct for which the jury returned a guilty verdict on, *inter alia*, two counts of securities fraud.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-18127

In the Matter of

MARTIN SHKRELI,

Respondent.

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. 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

Certificate of Service

I hereby certify that I served a letter to the Honorable James E. Grimes dated January 5, 2018 and a proposed order on:

The 5th day of January 2018, by email on:

The Honorable James E. Grimes
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2557
ALJ@sec.gov

Benjamin Brafman, Esq.
Andrea Zellan, Esq.
Brafman & Associates, P.C.
767 Third Avenue, 26th Floor
New York, NY 10017
bbrafman@braflaw.com
azellan@braflaw.com

The 5th day of January 2018, by facsimile and UPS (original) on:

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2557

/s/ Eric M. Schmidt

Eric M. Schmidt
Senior Counsel
Division of Enforcement
Securities and Exchange Commission
Brookfield Place
200 Vesey Street, Suite 400
New York, New York 10281
(212) 336-0150
SchmidtE@sec.gov