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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
~~DENVER REGIONAL OFFICE~~
Byron G. Rogers Federal Building
1961 Stout Street
Suite 1700
Denver, CO 80294-1961

January 5, 2018

VIA EMAIL AND FACSIMILE

Honorable Judge James Grimes
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 25049



Re: *In the Matter of Barbara Duka*, Admin. Proc. No. 3-16349

Dear Judge Grimes:

The Division writes regarding the above-captioned proceeding. 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 in this proceeding, including the initial decision issued on August 29, 2017, were well-founded, and respectfully requests that they be ratified. To that end, the Division attaches a proposed draft order ratifying the initial decision issued on August 29, 2017 to this letter.

On December 20, 2017, counsel for the Respondent sent a joint letter to the Court informing it that neither Ms. Duka nor the Division intended to submit new evidence or a brief.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. McKenna", with a long horizontal flourish extending to the right.

Stephen C. McKenna
Senior Trial Counsel
Securities and Exchange Commission's
Division of Enforcement

cc: Guy Patrillo (by electronic mail)
Daniel Goldman (by electronic mail)
Theresa Gue (by electronic mail)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16349

In the Matter of

BARBARA DUKA,

Respondent.

[PROPOSED] ORDER OF RATIFICATION

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 August 29, 2017. This decision to ratify and affirm is based on my detached and considered judgment after an independent evaluation of the merits.

HON. JAMES GRIMES