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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DENVER REGIONAL OFFICE
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August 5, 2016

Via Email

David A. Zisser
Jones & Keller
1999 Broadway, Suite 3150
Denver, CO 80202

Re: In the Matter of Jan E. Helen, AP File No. 3-17319

Dear Mr. Zisser,

We write to clarify a matter raised during the July 26, 2016 pre-hearing conference in the above-referenced matter. During that conference, Chief ALJ Brenda P. Murray rejected Respondent's challenge to the method of Chief ALJ Murray's appointment, noting that "I have a certificate that says I was appointed" and subsequently providing the certificate to the Office of the Secretary for inclusion in the record. *See* Tr. at 5-6; Order Following Prehearing Conference at 2. *See also* Tr. at 9-10 (Chief ALJ Murray stating that the Commission "has acknowledged as a fact that I was appointed").

The Division has stipulated before the Commission that Chief ALJ Murray was not hired with the approval of the Commissioners, and adheres to that position in this case. *See, Notice, OptionsXpress, Inc. (July 23, 2015)*. Moreover, the Commission has not determined the legal significance of that certificate, if any, and has not relied on it in rejecting Appointments Clause challenges to Chief ALJ Murray's position. Rather, in *J.S. Oliver Capital Management, L.P.*, Securities Act Release No. 10100 (June 17, 2016), where the Division did not "dispute that Chief ALJ Murray was not appointed by the President, the head of a department, or a court of law," the Commission found that because Commission ALJs are not constitutional officers, "the appointment of Commission ALJs is not subject to the requirements of the Appointments Clause." *Id.* at 35.

Sincerely,

Danielle R. Voorhees
Trial Counsel, Division of Enforcement

cc: ALJ@sec.gov