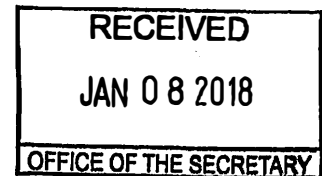




UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
CHICAGO REGIONAL OFFICE  
SUITE 1450  
175 WEST JACKSON BOULEVARD  
CHICAGO, ILLINOIS 60604



CHRISTOPHER H. WHITE  
SENIOR ATTORNEY  
DIVISION OF ENFORCEMENT

Telephone: (312) 353-7411  
Facsimile: (312) 353-7398

January 5, 2018

**Via Email and UPS**

Hon. Carol Fox Foelak  
Administrative Law Judge  
United States Securities and Exchange Commission  
100 F Street, N.E., Mail Stop 2557  
Washington, DC 20549-1106

Re: **In the Matter of Jeffrey Gainer**  
**Administrative Proceeding File No. 3-18130**

Dear Judge Foelak:

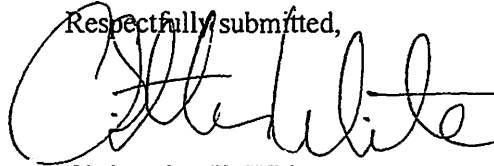
On November 30, 2017, the Commission issued an order ratifying the prior appointment of its administrative law judges to preside over administrative proceedings. *See In re: Pending Administrative Proceedings*, Securities Act Release No. 10440 (Nov. 30, 2017). As applied to this proceeding, the order 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, including the Initial Decision Making Findings and Imposing Sanction by Default issued on November 2, 2017, were well-founded and respectfully requests that they be ratified. To that end, the Division attaches a proposed draft order to this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. H. White", written in a cursive style.

Christopher H. White

Enclosures

cc: Jeffrey Gainer (via certified mail)

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18130**

**In the Matter of**  
**JEFFREY GAINER**

**[PROPOSED] 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, including the Initial Decision Making Findings and Imposing Sanction by Default issued on November 2, 2017. This decision to ratify and affirm is based on my detached and considered judgment after an independent evaluation of the merits.

---

Carol Fox Foelak  
Administrative Law Judge

Certificate of Service

I certify that on January 5, 2018, I caused a true and correct copy of the attached letter and proposed order to be served upon the following:

VIA EMAIL AND OVERNIGHT UPS:

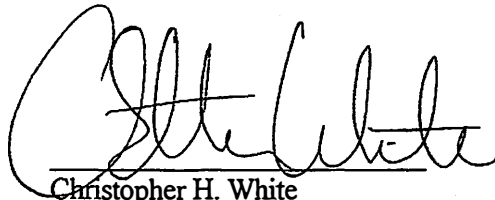
Honorable Carol Fox Foelak  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, NE, Mail Stop 2557  
Washington, DC 20549-2557

VIA CERTIFIED MAIL:

Mr. Jeffrey Gainer

██████████  
██████████████████  
██

P.O. Box ██████████  
Morgantown, WV ██████████



Christopher H. White  
Division of Enforcement  
Securities and Exchange Commission  
Chicago Regional Office  
175 West Jackson Boulevard, Suite 1450  
Chicago, Illinois 60604  
(tel.) 312-353-7411  
(fax) 312-353-7398