



U.S. Department of Justice

Civil Division
Federal Programs Branch
20 Massachusetts Ave, N.W.
Washington, DC 20530

August 10, 2015

VIA ECF

The Honorable Richard M. Berman
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Duka v. SEC*, No. 15-cv-357 (RMB)

Dear Judge Berman:

We write on behalf of Defendant the Securities and Exchange Commission (the “SEC” or “Commission”) regarding the Court’s Decision & Order of August 3, 2015, ECF No. 57, denying the government’s motion to dismiss and reserving judgment “on Plaintiff’s application for a preliminary injunction and/or imposition of such an injunction for 7 days . . . to allow the SEC the opportunity to notify the Court of its intention to cure any violation of the Appointments Clause.” *Id.* at 5. In its Order, the Court further directed the parties “not to proceed with Duka’s SEC proceeding in the interim.” *Id.* at 6. That interim period expires today.

As this Court is aware, respondents in several pending SEC administrative proceedings have raised before the Commission Appointments Clause challenges to the authority of the SEC ALJs who presided over the initial stage of their proceedings. In at least one proceeding, the Commission has heard argument on the constitutional challenge and has also ordered supplemental briefing. Although the Commission in its adjudicatory capacity may decide in due course whether SEC ALJs’ appointments violate the Constitution and, if so, the appropriate remedy for such a violation, as of the filing of this letter, the Commission has not issued a decision or otherwise taken any public action on these questions.

Given the expiration of the interim period specified by the Court, the SEC’s Division of Enforcement plans to move forward with Ms. Duka’s administrative proceeding, absent further order by this Court. Specifically, in light of this Court’s Order, the ALJ assigned to the administrative proceeding has stayed the proceeding until August 10, 2015, after which the Division of Enforcement is obligated to comply with deadlines already set in the matter, the first of which is on August 12, 2015.

We thank you for your consideration of this letter.

Dated: August 10, 2015

Respectfully submitted,

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