

White Collar Update: Solicitor General Sides with Opponents, Agrees SEC ALJs are Unconstitutionally Appointed

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On November 29, 2017, the Solicitor General filed a brief in the Supreme Court on behalf of the Securities and Exchange Commission (“SEC”) reversing the agency’s position and arguing that SEC administrative law judges (“ALJs”) have been unconstitutionally appointed to their posts. The Solicitor General’s [brief](#) was filed in response to Raymond Lucia’s petition for a writ of certiorari after the D.C. Circuit Court of Appeals rejected a challenge to the constitutionality of the appointment of SEC ALJs (detailed [here](#)). The Solicitor General also raised questions regarding the validity of statutory restrictions that protect SEC ALJs from removal. The SEC did not sign the Solicitor General’s brief; however, the Commission quickly took action to attempt to cure its potentially unconstitutional appointments through an [order](#) issued on November 30, 2017 that ratified the prior appointment of its current ALJs.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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