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August 28, 2015

By *ECF*

Ms. Catherine O'Hagan Wolfe  
Clerk of the Court  
U.S. Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

RE: *Lynn Tilton, et al. v. SEC, No. 15-2103*

Dear Clerk of the Court:

As counsel for Appellants, we write pursuant to Federal Rule of Appellate Procedure 28(j) in response to Appellee's letter of August 26, 2015, regarding *Bebo v. SEC*, \_\_ F.3d \_\_, 2015 WL 4998489 (7th Cir. Aug. 24, 2015).

**First**, *Bebo* contradicts the law of this Circuit. Compare *Bebo*, slip op. at 2-3 (finding no district court jurisdiction after commencement of an SEC proceeding) with *Touche Ross & Co. v. SEC*, 609 F.2d 570, 577 (2d Cir. 1979) (finding such jurisdiction); see App. Br. at 15-16; Reply Br. at 2, 6-7.

**Second**, *Bebo* failed to undertake the required analysis of the text, structure and purpose of 15 U.S.C. § 78y, which did not create an "exclusive route to review" and did not "limit the jurisdiction that

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other statutes confer on district courts." *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 489 (2010); see App. Br. at 13-14; Reply Br. at 4-6.

**Third**, *Bebo* wrongly relied on *Elgin v. Department of Treasury*, 132 S. Ct. 2126 (2012), which involved a different type of claim under a different statutory scheme. App. Br. at 23; Reply Br. at 8. Because petitioner Elgin had lost his ALJ proceeding before suing in district court, he did not dispute that his claim was covered by the jurisdiction-channeling provision. *Id.* at 2134. Appellants, who still await their ALJ trial, do not challenge a "final order" or "rule" within the meaning of § 78y, as even the court below recognized. App. Br. at 14-15; Reply Br. at 4.

**Fourth**, because this case (unlike *Bebo*) arrives for expedited review before the ALJ trial has begun, this Court has the power to resolve the important constitutional question now, preventing a wasteful trial and a futile Commission appeal. See App. Br. at 4-5, 24-29; Reply Br. at 8-12. The Court's guidance is also crucial for like cases.

Respectfully submitted,

/s/ David Zornow  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2015, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ David Zornow  
David M. Zornow