

Paula D. Shaffner

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215.564.8761

August 11, 2017

via hand delivery

Brent J. Fields, Esq.  
Secretary  
United States Securities and  
Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: In the Matter of 6D Global Technologies, Inc.  
Administrative Proceeding File No. 3-17908**

Dear Mr. Fields:

Our firm represents 6D Global Technologies, Inc. ("6D"). I am writing to inform the Securities and Exchange Commission (the "Commission") of the most recent critical action that undermines completely the position of the Nasdaq Stock Market, LLC ("Nasdaq") in this matter.<sup>1</sup> The criminal charges against Benjamin Wey have now been dismissed. Those charges were the central focus of NASDAQ's decision to delist 6D. The wisdom of the legal prohibition against relying on mere allegations in a case such as this has now been graphically and profoundly proven correct. The only remedy sufficient to undo the significant and crippling harm which has been done to 6D is to reverse the decision to delist.

On August 8, 2017, the Government filed a nolle prosequi in the criminal action against Wey, which "dismiss[ed] the charges pending against Wey" and "dispose[d] of th[e] case" against Wey. See U.S. v. Wey, No. 15-cr-00611, Nolle Prosequi (SDNY August 8, 2017),

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<sup>1</sup> This authority constitutes additional material which further supports 6D's Opposition Brief to the Motion to Dismiss the Application for Review of, as well as the issues identified in its Application for Review, and which the Commission should consider pursuant to 17 C.F.R. § 201.421(b). The relevant factual background and procedural history is set forth in my letter to the Commission dated June 21, 2017, which is incorporated herein by reference.

attached hereto as Exhibit 1.<sup>2</sup> The dismissal of all of the criminal charges against Wey – which were the impetus for Nasdaq’s delisting process and which poisoned the entire process for 6D – demonstrates the precise reason why Nasdaq should never have used unproven allegations in halting 6D’s trading and in its delisting determination. The Commission’s own precedent does not permit facts to be adjudicated on the basis of mere allegations.<sup>3</sup> By using the unproven allegations against Wey and insinuating guilt by association, Nasdaq put into motion a series of events that led to devastating consequences for 6D, which trampled on 6D’s rights without care and without a careful consideration of the posture of the charges and claims at issue that are now known to have a complete lack of foundation.

Nasdaq’s entire reason for the delisting determination stemmed from Wey and the charges against him. In fact, during Nasdaq’s brief presentation before the Nasdaq Listing Qualifications Hearing Panel (the “Hearing Panel”), Nasdaq referenced Wey by name no less than **40 times**, devoting nearly its entire presentation to Wey, the charges against him, and his relationship with 6D. (See Transcript of the Nasdaq Listing Qualifications Hearing Panel for 6D Global Technologies, Inc., at pp. 79-94 (Jan. 21, 2016) (“Hearing Transcript”), attached hereto as Exhibit 4). Nasdaq’s hostility with respect to Wey is obvious and palpable throughout this transcript and otherwise. Rather than allowing 6D to be judged on its own merit as the independent business that it is, Nasdaq attempted to try to tar 6D with the same brush, even going so far as to claim that “Ben Wey is part of the DNA of this company.” (*Id.* at 83:11-12).

Furthermore, Nasdaq’s sole focus on Wey and the charges against him in seeking 6D’s delisting was crystal clear from the beginning of its argument where Nasdaq stated:

Now, if you try to focus on all of these factors you're going to get lost in all the minutia, so you're going to lose sight of what really is at the heart of this matter. When making a determination in this

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<sup>2</sup> The civil claims against Wey may be dismissed as well. In the Commission’s action against Wey, the Commission filed a letter with the Court in June 2017, identifying the suppression order and stating that the Commission was “evaluating how the order in the criminal case may impact this action,” particularly in light of whether the Government planned to appeal the suppression order. *See SEC v. Wey et al.*, No. 15-cv-7116, Letter of Derek Bentsen, Assistant Chief Litigation Counsel of the Commission (S.D.N.Y. June 21, 2017), attached hereto as Exhibit 2. Since the dismissal of the charges, the Commission has filed a letter with the Court, stating that the Commission is evaluating the suppression order and the Government’s decision not to appeal the order and “request[ing] additional time, until September 8, 2017, to advise the Court whether the SEC will seek leave to file any motions as a result of the suppression order in the criminal case.” *See SEC v. Wey et al.*, No. 15-cv-7116, Letter of Derek Bentsen, Assistant Chief Litigation Counsel of the Commission (S.D.N.Y. August 10, 2017), attached hereto as Exhibit 3. It is entirely possible that the SEC may dismiss its claims against Wey as well.

<sup>3</sup> *See, e.g., In re Weeks*, Release No. 199 (S.E.C. Feb. 4, 2002) (“It is inappropriate for the Division to assert, as if it were an adjudicated fact, that Hesterman and Kenneth Weeks controlled Pan World at the time that the company was selling unregistered securities.”); *In re H.J. Meyers & Co.*, Release No. 211 (S.E.C. Aug. 9, 2002) (“The Division has repeatedly cited from the Florida complaint, as if that document contained adjudicated facts . . . In reality, the Florida complaint was simply a collection of allegations that were never proven.”); *id.* (“Like the 1990 Florida complaint, the 1994 NASD complaint is not entitled to any weight here.”).

case you should look at the bigger picture and focus on the primary, over-arching issue. That issue is whether or not it is appropriate to delist the company based on the criminal and civil charges against Ben Wey and his affiliates given their extensive relationship with the company.

(Hearing Transcript, at 79:12-22 (emphasis added)). It was also clear from the conclusion of Nasdaq's presentation before the Hearing Panel that the entire basis for the proceeding was due to the charges against Wey in which Nasdaq stated:

So getting back to what our initial question was, is it appropriate to delist the company based on the criminal and civil charges against Ben Wey and his affiliates given their extensive relationship with the company? As we have demonstrated here today, as well as in our written submissions, the answer to that question is yes. As such, we believe the appropriate determination is to delist the company's securities from NASDAQ.

(Id. at 94:11-20 (emphasis added)). While Nasdaq more recently seeks to claim that the delisting proceedings were not about Wey and the charges against, that position is absurd. The Government's decision to dispose of its charges against Wey completely are yet further extraordinary circumstances permitting the Commission to review the Application for Review of 6D under 17 C.F.R. § 201.420(b).

As a result, we respectfully request that the Commission consider the dismissal of the criminal charges against Wey pursuant to 17 C.F.R. § 201.421(b) in reaching a conclusion as to Nasdaq's Motion to Dismiss because these decisions are further extraordinary circumstances warranting the review of 6D's Application for Review under 17 C.F.R. § 201.420(b). The catastrophic series of events precipitated by Nasdaq's delisting were wholly unnecessary and cannot be permitted to stand.

Furthermore, in light of this new evidence, we further request that Nasdaq list 6D immediately, and should Nasdaq agree to list 6D immediately, 6D will agree to withdraw its appeal before the Commission.

I appreciate your prompt attention to this matter.

Respectfully,



Paula D. Shaffner

Brent J. Fields  
August 11, 2017  
Page 4

cc: Edward S. Knight, Esq. (via hand delivery)  
John M. Yetter, Esq. (via hand delivery)  
Arnold Golub, Esq. (via hand delivery)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- :

NOLLE PROSEQUI

BENJAMIN WEY, :

15 Cr. 611 (AJN)

a/k/a "Benjamin Wei," :

a/k/a "Tianbing Wei," and :

SEREF DOGAN ERBEK, :

a/k/a "Dogan Erbek," :

Defendants. :

- - - - - x

1. The filing of this nolle prosequi will dispose of this case against BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant.


2. On September 8, 2015, Indictment 15 Cr. 611 (AJN) was filed, which charged that BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," and SEREF DOGAN ERBEK, a/k/a "Dogan Erbek," the defendants, conspired to commit securities fraud and wire fraud, in violation of Title 18, United States Code, Section 371 (Count One); committed securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Count Two); committed securities fraud in violation of Title 18, United States Code, Sections 1348 and 2 (Count Three); committed wire fraud, in

violation of Title 18, United States Code, Sections 1343 and 2 (Count Four); failed to disclose to the Securities and Exchange Commission (the "SEC") ownership in excess of five percent of certain stocks, in violation of Title 15, United States Code, Sections 78m(d) and 78ff, Title 17, Code of Federal Regulations, Sections 240.13d-1, and Title 18, United States Code, Section 2 (Counts Five and Six); and money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2 (Counts Seven and Eight).

3. On June 13, 2017, the Court granted a motion, filed by BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, to suppress evidence seized during a search of WEY's apartment and the New York offices of New York Global Group, Inc.

4. The Government sought charges in this matter based in significant part on materials seized during those searches. Because the Government can no longer rely on that evidence at trial against BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, the Government has decided to dismiss the charges pending against Wey.

5. Accordingly, the Government recommends that an order of nolle prosequi be filed as to BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, in the above-captioned matter.

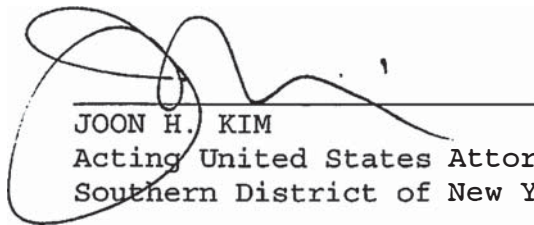


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BROOKE E. CUCINELLA  
BRENDAN QUIGLEY  
P. IAN McGinley  
Assistant United States Attorneys  
Tel.: (212) 637-2477/2190/2257

Dated: New York, New York  
August 8, 2017

Upon the foregoing recommendation, I hereby direct, with leave of the Court, that an order of nolle prosequi be filed as to BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, with respect to Indictment 15 Cr. 611 (AJN).



JOON H. KIM  
Acting United States Attorney  
Southern District of New York

Dated: New York, New York  
August 8, 2017

SO ORDERED:

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HONORABLE ALISON J. NATHAN  
United States District Judge  
Southern District of New York

Dated: New York, New York  
August \_\_, 2017



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
DIVISION OF ENFORCEMENT  
100 F STREET, N.E.  
WASHINGTON, D.C. 20549-4631



Derek S. Bentsen  
Assistant Chief Litigation Counsel  
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Facsimile: (202) 772-9282  
BentsenD@sec.gov

June 21, 2017

**Via ECF**

The Honorable P. Kevin Castel  
United States District Judge for the Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

**Re: *Securities and Exchange Commission v. Wey, et al.*, 15-cv-7116-PKC (SDNY)**

Dear Judge Castel:

We write to inform the Court of a recent decision in the related criminal matter. On June 13, 2017, Judge Nathan issued an opinion and order suppressing all evidence seized during the execution of search warrants at defendants Benjamin and Michaela Wey's residence and New York Global Group's offices. *See United States v. Wey*, 15-cr-611 (AJN), Dkt. No. 114. The Department of Justice has not yet indicated whether it intends to appeal this decision.

The Commission is evaluating how the order in the criminal case may impact this action. Once we are informed of Department of Justice's decision regarding appeal, we will update the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Bentsen".

Derek S. Bentsen

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
DIVISION OF ENFORCEMENT  
100 F STREET, N.E.  
WASHINGTON, D.C. 20549-4631



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August 10, 2017

Via ECF

The Honorable P. Kevin Castel  
United States District Judge for the Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

**Re: *Securities and Exchange Commission v. Wey, et al.*, 15-cv-7116-PKC (SDNY)**

Dear Judge Castel:

On June 21, 2017, counsel for the SEC filed a letter informing the Court that Judge Nathan had issued an order in the criminal case of *United States v. Wey, et al.*, suppressing all of the evidence recovered during the execution of search warrants at Defendant Benjamin Wey's residence and New York Global Group's offices. Dkt. No. 157. On August 8, 2017, the U.S. Attorney's Office dismissed the indictment against Wey. *United States v. Wey*, 15-cr-611-AJN (S.D.N.Y.), Dkt. No. 129. The indictment against Defendant Seref Dogan Erbek remains pending.

Counsel for the SEC are continuing to evaluate and consult with our client, the Commission, about the impact of Judge Nathan's order and the decision of the U.S. Attorney's Office not to appeal that order on the case against each of the defendants in this instant action. We request additional time, until September 8, 2017, to advise the Court whether the SEC will seek leave to file any motions as a result of the suppression order in the criminal case.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek Bentsen".

Derek S. Bentsen

UNITED STATES OF AMERICA

NASDAQ STOCK MARKET

NASDAQ LISTING QUALIFICATIONS HEARING PANEL

6D GLOBAL TECHNOLOGIES, INC.

Washington, D.C.

Thursday, January 21, 2016

1 PARTICIPANTS:

2 Panel Members:

3 JOHN CAFFREY

4 KENDRA DECKER

5 Counsel to Panel:

6 AMY HORTON

7 Staff:

8 RANDY GENAU

9 ARNOLD GOLUB

10 ALAN ROWLAND

11 For 6D Global Technologies, Inc.:

12 TEJUNE KANG

13 MARK SZYNKOWSKI

14 PIOTR CHRZASZCZ

15 MICHAEL BANNOUT

16 BARRY GENKIN

17 MICHELLE GITLITZ

18 DAVID A. DONOHOE, JR.

19 KATHERINE ROBERSON PETTY

20 ROB MATLIN

21 TOM FINI

22

\* \* \* \* \*

## 1 P R O C E E D I N G S

2 (9:45 a.m.)

3 MS. HORTON: Going on the record.

4 Welcome to everyone. Thank you for making the  
5 trip and appearing before the NASDAQ hearings  
6 Panel. 6D Global Technologies is here. My name  
7 is Amy Horton. I hear to facilitate this process  
8 for you, so any questions or issues you have  
9 please feel free to direct them to me. I also  
10 serve as advisor to the Panel on the application  
11 of the NASDAQ listing rules.

12 The Panel, as you have been informed,  
13 I'm sure, are not part of NASDAQ. They are  
14 independent. They are independent of NASDAQ.  
15 They're not part of staff. We're going to talk  
16 about them in a moment. These are individuals  
17 selected by the Board and given the authority to  
18 preside over this process and to issue final  
19 decisions on a company's listings. I will ask  
20 them to briefly introduce themselves.

21 MR. CAFFREY: Good morning. John  
22 Caffrey. I'm retired investment manager with

1 First Manhattan Company of New York City.

2 MS. DECKER: I'm Kendra Decker. I'm a  
3 partner with Thornton LLP. I am part of our  
4 national office and I primarily work with all of  
5 our public companies in our practice, and have  
6 been in my whole career for almost 20 years.

7 MS. HORTON: Before we go further, are  
8 the people on the phone able to hear?

9 SPEAKER: Yes.

10 SPEAKER: Yes.

11 MS. HORTON: Just want you to feel free  
12 to speak up if there is any problem. We want --  
13 and you should know that there is a court reporter  
14 taking down the proceedings, and we want to make  
15 sure that those proceedings are clear in the  
16 transcript, and there's a lot of folks on the  
17 phone and in the room, so, you know, I may be  
18 playing a little referee here so that we don't  
19 talk over each other.

20 But what we're going to do, staff is  
21 represented here today, so we're going to ask the  
22 company to first make its presentation. You can

1       assume that the Panel has reviewed the materials  
2       that are in the record, but we want you to make  
3       your presentation, make your case. They may ask  
4       questions along the way or they may wait until the  
5       end of it. We will then ask staff to make its  
6       position known and give its presentation, and  
7       after that, which will pertain the same, sort of,  
8       dialogue will pertain and we may have some back  
9       and forth after that.

10               We want to make sure that everyone has  
11       the opportunity to say and provide to the Panel  
12       the information they need, but we do have -- you  
13       know, I will be watching to make sure that we  
14       don't go too far off track in terms of information  
15       or repetition just because we need to keep this  
16       focused. So I'm going to hand things over --  
17       actually, let's start down with staff and ask you  
18       to -- so that everybody can introduce themselves  
19       fully for the record.

20               MR. GENAU: Sure. My name is Randy  
21       Genau. I'm a director in NASDAQ listing  
22       qualifications.

1 MR. GOLUB: Hi. I'm Arnold Golub. I'm  
2 vice president in charge of listing qualifications  
3 department and deputy general counsel.

4 MR. ROLLAND: I'm Alan Rolland. I'm a  
5 director, also, in NASDAQ listing qualifications.

6 MS. HORTON: Great. So the company can  
7 do your introductions as you see fit. I would ask  
8 that the folks on the phone when you speak, if you  
9 could reintroduce yourselves so that we can, you  
10 know, identify voices with names.

11 SPEAKER: Should we do the initial  
12 introductions on the phone as well now?

13 MS. HORTON: Why don't you do -- yeah.

14 MS. ROBERSON-PETTY: My name is  
15 Katherine Roberson-Petty. I'm with Donohue  
16 Advisory. I serve as an advisor to the company.

17 MR. DONOHOE: I'm Dave Donohoe and I'm  
18 also an advisor to the company.

19 MR. KANG: Hi. Tejune Kang. Founder  
20 and CEO of 6D Global Company.

21 MR. SZYNKOWSKI: Mark Szykowski. Chief  
22 financial officer for 6D Global.



1 MR. FINI: Tom Fini of Catafago Fini  
2 LLP, outside counsel to 6D.

3 MR. DONOHOE: And on the phone why don't  
4 we start with the Audit Committee member?

5 MR. BANNOUT: Michael Bannout, audit  
6 committee.

7 MR. CHRZASZCZ: Good morning everyone.  
8 This is Pete Chrzaszcz, audit committee.

9 MR. DONOHOE: Let's go to Blank Rome.

10 MS. GITLITZ: Sure. This is Michelle  
11 Gitlitz. Counsel to the audit committee from  
12 Blank Rome.

13 MR. GENKIN: And Barry Genkin from Blank  
14 Rome, also counsel to the audit committee.

15 MR. DONOHOE: And, Rob, are you on?

16 MR. MATLIN: Yes, I am. Robert Matlin  
17 from K&L Gates, outside counsel to the company.

18 MS. HORTON: Great.

19 MR. DONOHOE: Well, let me begin by  
20 thanking the Panel for giving us the opportunity  
21 to make our presentation today. So we're going to  
22 divide the presentation up into, basically five

1 segments. We're going to start out by talking to  
2 you about the company, you know, who they are,  
3 what they do. We're then going to demonstrate  
4 that Benjamin Way did not and does not exert  
5 control or significant influence over the company.  
6 We'll then discuss the fact that we believe that  
7 the staff's conclusions, for the most part, are  
8 inaccurate and misplaced. We'll also provide an  
9 update on the audit committee investigation.  
10 Finally, we'll demonstrate that there are no  
11 public interest concerns present in this case that  
12 would support a delisting determination.

13 With that I'm going to turn it over to  
14 Tejune. He's going to --

15 MS. ROBERSON-PETTY: Hand these out.  
16 There's three for you.

17 MR. KANG: Again, I'm the founder and  
18 CEO of 6D Global. Thank you very much for the  
19 time today. I'd like to thank both the  
20 independent review board as well as NASDAQ for  
21 being here and taking the time.

22 I think what would be helpful is for me

1 just to talk a bit about the company. Obviously,  
2 I know there are some concerns and that's why  
3 we're here today, to talk about those things. I'm  
4 confident we'll get through those. But more  
5 importantly I wanted to at least talk about the  
6 company, what we do, where we come from, and  
7 hopefully that should provide some context.

8 I'm not a PowerPoint kind of person, so  
9 I'd rather just have a conversation here since,  
10 you know, we're sitting here. I started the  
11 company in 2004, but prior to that I was born and  
12 raised in California, grew up in Sanfransico Bay  
13 area, went to school at UC-Davis, and really was  
14 interested in technology pretty early in my life.  
15 My first job out of college was actually working  
16 at PeopleSoft. At some point Oracle acquired  
17 PeopleSoft. Obviously, PeopleSoft was known to do  
18 a lot of ERP financial implementations.

19 I've always been an entrepreneur at  
20 heart. I think it's just my nature. I've always  
21 wanted to go out there and start my own company,  
22 but I lived in kind of the corporate world doing

1 implementations for large companies. At some  
2 point I said, well, let me go into real estate.  
3 Let me do some import/export and it led to doing  
4 technology in my own, doing some contract work.  
5 So I started my own company called Six Dimensions  
6 in 2004. That was really the founding basis.

7 Our customers early on were Boeing, HP,  
8 and Apple all along the West Coast as well. We  
9 were able to do a lot of their CRM, customer  
10 relationship management software. We did ERP  
11 financial HR implementations. Based on that it  
12 kind of evolved. About a year later Oracle said  
13 they were going to buy PeopleSoft. Because I had  
14 a lot of former colleagues that worked at  
15 PeopleSoft they said, "Hey, can I join your firm?  
16 What can we do? How do we help you out," things  
17 of that nature. So I went about hiring some of  
18 these folks. Some were contractors. Some were  
19 fulltime people and we ended up doing a lot of  
20 great work. This led to contracts with Boeing,  
21 HP. We did variable compensation on the HR side.  
22 We did some financial implementations around

1 budgeting.

2 I really got a great understanding of  
3 what business executives lose sleep over, what  
4 keeps them up at night. Pretty early on I got  
5 into what's known as data warehousing. Data  
6 warehousing is where you build a data warehouse.  
7 You can build out reports, and metrics, and  
8 scorecards, and things of that nature. So from  
9 2004 to about 2008 I grew the company pretty  
10 successfully. In a financial crisis a lot of the  
11 budgets were frozen. I ended up downsizing,  
12 basically, and a lot of IT work was being  
13 outsourced to India at the same time as well.

14 So in 2010 I restarted the company and I  
15 pivoted. I said, well, I think there's a big  
16 opportunity in the digital marketing space. I  
17 said, how do we really enter the space?

18 Obviously, the iPad was doing pretty well. Keep  
19 in mind this was in the middle of the recession,  
20 so I was able to go out there and I negotiated  
21 some pretty good office rates, got some great  
22 office space, hired two employees. Again, I think

1     this just provides context of where we came from,  
2     how we grew, and, obviously, what led to going  
3     public. I want to provide some of the background  
4     in this and not lose sight of a healthy, thriving  
5     company.

6             Just referring to some quick fact on  
7     here, I think this is Slide 5. This kind of gives  
8     you an overview, but essentially in 2010 I have  
9     two employees. We did about \$1 million in  
10    revenue. Then we got to \$3 million in revenue in  
11    2011. Then \$6 million. Then \$9 million.  
12    Essentially, starting with Oracle and being a BI  
13    person and pivoting to being more of a digital  
14    marketing firm we were selling more to a chief  
15    marketing officer, to the CMO.

16            Shutterfly was one of our earliest  
17    customers, so we started doing implementations  
18    where you upload pictures and you can order a  
19    photobook, so you get for weddings and  
20    anniversaries and things of that nature. So the  
21    organization evolved and grew quite rapidly. We  
22    had two employees. Then 12. Then 30. Then 50.

1 It got to a point where I said, how do I continue  
2 to scale and grow? I think one of our challenges  
3 was financials. How do we get an injection of  
4 capital?

5 I explored a bunch of different options.  
6 I said, well I can get private equity. I can get  
7 family offices to potentially invest. I can take  
8 a bank loan. But at the time I was boot strapping  
9 the whole business. One of the opportunities that  
10 did come along was to do a merger with a publicly  
11 traded company. So we did a merger and at the end  
12 of 2014 or about mid-2014 with CleanTech. That  
13 allowed us to go public.

14 Once we were public we also raised  
15 roughly about \$5 million, \$5.5 million which then  
16 led to two acquisitions in March of 2015. Again,  
17 my whole thought process was how do I build a  
18 great company with great people doing really cool  
19 stuff? I mean, that's all I was thinking about.  
20 I also thought about scale. Because being global,  
21 the world is flat. There's a lot of competition  
22 amongst the world and so forth.

1           So I evaluated several accounting audit  
2       firms and went with BDO. So we chose BDO and the  
3       primary reason why we chose BDO was because they  
4       would give us the scale and introduce us to other  
5       BDO firms throughout the world. That was a big  
6       deal to me. Today, now we've been able to expand  
7       out to six strategic offices, California is where  
8       we started. We're in Ohio, Oregon, Minnesota, New  
9       York, and most recently, at the end of last year,  
10      we went to Dublin, Ireland. We expanded out to  
11      Dublin, Ireland. We now have a small footprint  
12      into the UK, Europe, European market. In addition  
13      to that, we also have a GSA Schedule 70 which  
14      allows us to do federal government work as well.  
15      We just recently started winning some contracts.  
16      It's a huge potential.

17                In terms of fast forwarding today,  
18      what's the plan going forward? A lot of our  
19      success I would attribute because we're on NASDAQ,  
20      and the fact that NASDAQ does enable us to have  
21      that global reach to create more opportunities for  
22      our younger staff. We have over 100 employees



1 today, and, obviously, relocated some of them to  
2 Europe, and I'm looking to expanding out to Asia  
3 Pacific, the Asia PAC this year as well. We're  
4 looking at Singapore. We're looking at Australia.  
5 We're looking at Hong Kong and Japan. I'll go  
6 into that in a little bit, but hopefully that  
7 provides at least some background of where I came  
8 from, my interest, and what I'm trying to do.

9 The next slide --

10 MR. CAFFREY: Mr. Kang, can I ask you a  
11 quick question?

12 MR. KANG: Absolutely.

13 MR. CAFFREY: I see you're listed as a  
14 former Oracle Corp strategist and engineer.

15 MR. KANG: Yes.

16 MR. CAFFREY: But you were an economics  
17 major, right? How did you become an engineer?

18 MR. KANG: That's a great observation.  
19 I actually was greatly interested in computer  
20 science, so I started off doing computer science,  
21 but then as we got really deep into computer  
22 science I think there's a lot of stats courses and

1 things of that nature. What I really appreciate  
2 is the business aspects of technology. So if you  
3 can take a business problem and solve it using  
4 technology that's what I was really interested in.

5 So on the technology side I was more of  
6 an enthusiast, like, how --

7 MR. CAFFREY: Sure.

8 MR. KANG: This was back in the modem  
9 days. We had modems. We had bulletin boards. I  
10 was calling up places. I had an analog. You  
11 know, I started off with VHS tapes, Sony versus  
12 VHS to then it went to laser discs, so just from  
13 an electronics I was kind of a techie, so to  
14 speak.

15 MR. CAFFREY: Sure.

16 MR. KANG: This stuff I studied in  
17 school --

18 MR. CAFFREY: You're basically  
19 self-taught?

20 MR. KANG: Yes. Absolutely. But also  
21 during school I took a lot of computer science  
22 classes. I took some engineering courses. I took

1 stats courses. I didn't go as far enough along to  
2 actually get a computer science degree.

3 MR. CAFFREY: Right.

4 MR. KANG: I thought about it, but I was  
5 like --

6 MR. CAFFREY: That's okay.

7 MR. KANG: -- I want to get out in the  
8 real world and get out there and do some cool  
9 things.

10 MR. CAFFREY: Okay.

11 MR. KANG: I know how to program. I  
12 know databases. I've created relational  
13 databases. That's actually one of the reasons why  
14 I went to PeopleSoft was because they had a great  
15 foundation of learning the technology.

16 So being an engineer and also looking at  
17 the business aspect, and that's a great point,  
18 because when I was at PeopleSoft what I enjoyed  
19 most was actually building out a data warehouse.  
20 Because now with the date warehouse you can create  
21 a dashboard and it gives you so much rich  
22 information in terms of here are the KPIs, the key

1 performance indicators of the metric. Which  
2 direction? What are the ratios? What are the  
3 trends? Obviously, today it's known as big data.  
4 Hopefully that answers your question.

5 MR. CAFFREY: It does. Thank you.

6 MR. KANG: Okay. So the next slide here  
7 on Slide 6, I wanted also, again, reflect back on  
8 our employees because without the employees there  
9 would be no company. Without all the great stuff  
10 we'd be doing for our customers. A lot of these  
11 are more in a social setting. The top left corner  
12 that's our softball team out in Oregon. The top  
13 right we have kind of a rivalry. I'm a Golden  
14 State Warrior fans, you know, against the  
15 Cleveland Cavilers. This is just a small  
16 reflection of some of our employees and what they  
17 do. More recently we had several Christmas  
18 celebrations through the country, so we have a lot  
19 of fun. I think culture is a big part of the  
20 company.

21 I'd like to move along were. On Slide  
22 7, really this goes more into what are we today

1 and what are we trying to do and become. So as a  
2 company what I'm building is basically a one stop  
3 shop for a chief marketing officer, for a CMO,  
4 similar to when you go to a grocery store there  
5 are a lot of things that are very convenient. At  
6 a grocery store today you have a Starbucks, right?  
7 You have a dry cleaners. You have a pharmacy. So  
8 you're able to go to one place and extremely  
9 convenient for the consumer.

10 In the same way, a chief marketing  
11 officer, they're looking for a lot of support.  
12 They want to stay relevant. The biggest question  
13 that CMOs or even CDOs, chief digital officers,  
14 have today is how do they reach their target  
15 audience. The fact that most people today they  
16 don't watch TV. They're binge watching Netflix,  
17 right? Or they're DVR recording TV shows.  
18 They're not listening to the radio. They're on  
19 Pandora or Spotify. So how do these big  
20 organizations, whether it's Nabisco, Coca-Cola,  
21 Pepsi, how do they reach their consumers if  
22 they're not on TV or radio? Unfortunately, when

1 you're stuck in traffic people are looking at  
2 their mobile device. They're not looking at the  
3 billboards anymore, so that's where the complete  
4 digital disruption, always on 24/7, 365 days a  
5 year, and ecommerce, shopping online, all that  
6 stuff is very relevant. That's what we enable our  
7 customers to do. We help them stay relevant so  
8 they don't become dinosaurs.

9 We've had a tremendous track record of  
10 doing so as well and I'll go into that. Our  
11 mission is really to make digital more human,  
12 becoming a one stop shop for a CMO. Going to the  
13 next page here on Slide 8, where we really started  
14 was what's known as web experience. I don't want  
15 to get too deep into this because I know there's a  
16 lot of things to talk about, Amy and I understand  
17 that.

18 Where we started was, as I mentioned  
19 Shutterfly, we did websites. We really knew how  
20 to personalize information. I'll give one or two  
21 examples and that's it. If you live in Boston or  
22 if you live in New York you'll be part of a

1 different fan base. One of our customers in Time  
2 Warner Cable. Obviously, a large cable company.  
3 They want to make sure that the content that they  
4 serve up online is relevant to their potential  
5 customers. Their potential customers are either  
6 going to be in New York or they might be in  
7 Boston. Well, they're going to be either a  
8 Yankees fan or a Red Socks fan.

9           So Time Warner Cable asked us to build  
10 them, basically, an online platform that will help  
11 segment the market and target market who they are,  
12 so this has to do with demographics. What age?  
13 What sex? The interest of a woman between the  
14 ages of 15 to 20 is going to be very different  
15 than a man between 40 to 45. The type of shows  
16 they're going to watch. So we built this whole  
17 platform leveraging the Adobe Software and  
18 implementing a solution for Time Warner Cable.  
19 That's just a quick example. That's the web  
20 experience.

21           I mentioned earlier that we acquired two  
22 companies since having gone public and those have

1 to do with the other aspects, the creative, the  
2 mobile, the analytics. Analytics is Google, pay  
3 per click, search engine optimization, those kind  
4 of things. That being said, let me go to the next  
5 slide here. On Slide 9 this is really what our  
6 strategic road map is.

7 As I mentioned, we start off as more of  
8 an IT- focused company, selling to a CIO, a chief  
9 information officer. As we've evolved, pivoted in  
10 2010, started over with brand new two employees.  
11 We went from two employees, to 12 employees, to  
12 30, to 50, and now we have over 100 employees.  
13 We've raised over \$15 million in being public in  
14 less than a year from our growth strategy here.  
15 Basically we're shifting from becoming a  
16 IT-centric to more of a digital marketing company.

17 So my objective here is to really focus  
18 on digital marketing. It's extremely relevant.  
19 The things we're doing is really cool stuff. We  
20 have great customers and we're expanding, we're  
21 going global. Slide 10 and 11 really show some of  
22 our partnerships we have today. In Slide 11,



1 again, a reflection of some of our customers that  
2 we've been able to do business with and we  
3 continue to grow out accounts and really leverage  
4 some of the success we've had.

5 I'd like to take a minute to just  
6 recognize some of the achievements that we've had,  
7 and this is something I also brought out here are  
8 some of the awards that we've been able to get. A  
9 lot of them was just this past year since having  
10 gone public. On Page 12 there's just a reflection  
11 in the past and we're still a fairly young  
12 organization having restarted in 2010. So I'm on  
13 Slide 12 just going through some of the awards  
14 here. We've gotten the Entrepreneur of the month.  
15 We've gotten the Best of Manhattan Award. We've  
16 gotten Adobe Applications and Inc. Magazine. Inc.  
17 Magazine recognizes the fastest growing companies  
18 in America, so these are some of the awards that  
19 we've also gotten.

20 Page 13, Slide 13. Again, these are  
21 some pictures of the celebrations that we've had.  
22 I think it's quite -- you know, I'm quite proud of

1 the achievements that we've been able to do in  
2 such a short timeframe, going from two employees,  
3 to 12, to 30, to 50, and now over 100 in a short  
4 period of time.

5 On Page 14 we've also gotten, unusually,  
6 a high amount of press. I'm very thankful that we  
7 live in this digital world where there's all this  
8 press out there. When we did expand out to  
9 Dublin, Ireland, connect to Ireland, I think the  
10 finance minister said, hey, welcome to Ireland.  
11 We have about four or five employees and some  
12 contractors that are working there. We have some  
13 customers out in Europe that we're also now  
14 expanding to. So there's been a lot of great  
15 press out there and we've been in the news. I'm  
16 very proud of that as well, so I just wanted to  
17 share from those successes.

18 Finally, in terms of our team. I know  
19 the page numbers here are hard to see, but on  
20 Slide 15, we're also involved pretty heavy in the  
21 community as well. We do Habitat for Humanity.  
22 We've also done some food drives. We participate

1 in all levels throughout the organization here. I  
2 think it's important building a strong culture,  
3 having an employee base that really cares about  
4 what they do. We have a lot of millennials on our  
5 team as well and they're interested in what are we  
6 doing that really changes the world. How do we  
7 really get involved? Not only is our work  
8 interesting, but how do we get involved in the  
9 community.

10 I'll touch on the management team and  
11 wrap up here in a minute. On Slide 16 this is the  
12 management team we have in place. Again,  
13 everything is for growth-oriented thought process.  
14 What do we have to do to build a right platform?  
15 Ray Robinson, he came from NTT, a global  
16 multinational. Mark, obviously, here is our CFO  
17 from Ernst and Young. Mike Telatovisch used to  
18 manage over 600 employees at E&Y and KPMG on the  
19 professional services. Tandy's our head of HR and  
20 he was at Infosys prior and PWC overseeing over  
21 30,000 employees. My senior management team are  
22 very experienced individuals that have the right

1 experience that can help us grow both globally,  
2 organically, and through acquisitions. I mean,  
3 that's a big part of our strategy.

4 Finally, on Slide 17, this is our board  
5 of directors. I'm the chairman of the board was  
6 well. I believe we've always been a good  
7 corporate citizen of NASDAQ and followed great  
8 compliance and also good corporate governance.  
9 They're all independent as well, but I also wanted  
10 to share that with you as well. We do have both  
11 Pete and Michael on the phone for questions. So  
12 that being said, that's my presentation about the  
13 company. Again, I try to keep this as brief as  
14 possible and give you enough context about my  
15 personal background, what the company does, why  
16 we're relevant, why we're going global, why it  
17 makes sense. I'd like to pass it back to Dave.

18 MR. DONOHOE: Thank you, Tejune. I'm  
19 going to pick it up on Slide 20. Let's talk about  
20 Mr. Wey for a moment. Mr. Wey was never an  
21 officer, director, employee, or shareholder of the  
22 company. It's true that his advice was

1 occasionally sought by the company, primarily by  
2 Tejune. However, Mr. Wey never directed or in any  
3 way exercised control over the company, never  
4 exercised significant influence over the company.  
5 Mr. Wey, certainly, was not involved in the day to  
6 day operations of the company.

7 Turning over to Slide 21. No former or  
8 present director has ever made any decision based  
9 on Mr. Wey's influence. What we were going to  
10 hand out, our list of exhibits now. The first  
11 half has affidavits from all of the company's  
12 current directors and former directors, basically  
13 setting forth their statement that they've never  
14 been influence by Mr. Wey. Two of the current  
15 directors, the independent directors, have never  
16 met or corresponded with Mr. Wey.

17 MS. HORTON: Can I just ask, is this the  
18 first time that staff is seeing this?

19 MR. DONOHOE: Yes. The third  
20 independent director met him on only one social  
21 occasion and has never corresponded with him  
22 outside of that one occasion. Again, no former or

1 present director has ever discussed board agenda  
2 items or 6D business with Mr. Wey.

3 Flipping over to Slide 22. Promptly  
4 following the completion of the merger transaction  
5 with CleanTech, the 6D company moved to shed the  
6 connections that it had had with CleanTech. The  
7 first thing that they did was with respect to the  
8 auditors. So Goldman Kurland and Mohidin was the  
9 auditor for CleanTech, and in October of 2014 they  
10 transitioned to BDO. Holland and Knight was the  
11 legal counsel for CleanTech. They were securities  
12 counsel. In December 2014, which is when the  
13 company listed, they transitioned to K&L Gates and  
14 K&L Gates remains the company's outside legal  
15 counsel, and they're on the phone today.

16 William Uchimoto was the lawyer that the  
17 company used in connection with filing its listing  
18 application. He had worked with CleanTech in the  
19 past. The company stopped working with him also  
20 in December of 2014 when they listed. The company  
21 had not had any other listing issues from that  
22 point until this proceeding, and, obviously,

1 they're working with us now. The company did have  
2 one holdover director from CleanTech and that's  
3 Terry McEwen, so Terry's affidavit is in the  
4 exhibits as well. Terry gives a summary of his  
5 background which we would ask you to take a look  
6 at as well. He's no longer in the board, so there  
7 are no holdover directors from CleanTech.

8 Flipping over to Slide 23, so the staff  
9 has made a point of the fact that Mr. Kang  
10 occasionally sought advice from Mr. Wey.  
11 Certainly, Mr. Kang, as you probably could tell  
12 from the presentation that he just made, you know,  
13 he's a very active learner. He continuously reads  
14 the latest entrepreneurial publications and  
15 business journals, and he seeks input constantly  
16 from his peers. In that regard, he participates  
17 in multiple organizations all designed to share  
18 knowledge and information, including the EO  
19 organization, Vistage, the Inc. Business Owners  
20 Counsel and this peer to peer advisory for CEO and  
21 presidents. He's currently enrolled in the  
22 Harvard Owner President Management program and

1 he's in the class of 2017 for that program.

2 MR. KANG: I just wanted to mention  
3 something really quick on that as well. I think  
4 it's important that -- one of the things that my  
5 dad taught me was you have to be student for life.  
6 You're always learning. So I've always believe in  
7 being an active learner. I've always believed in  
8 seeking opinion and thoughts, and going out there  
9 and bouncing ideas. One of the great books I've  
10 read is called, Never Eat Lunch Alone. It talks  
11 about you should always talk to people. You  
12 should collaborate. You should try to figure out.  
13 I've read Richard Branson's Losing My Virginity or  
14 Good to Great or a lot of these different books  
15 out there just to adopt a lifelong leaning type of  
16 mentality.

17 Part of that, I did seek advice, and I  
18 talked to a lot of people, and I'm part of  
19 different organizations, said, what do you think  
20 about this? I even wrote a book. I know there's  
21 been some staff questions about that. So  
22 unfortunately, you know, a couple people told me



1 the book sucks, so I'm just to work on it more,  
2 but again, if I was the type of person that said,  
3 hey my book is great and published it and no one  
4 bought it then it would be like, oh man, this is a  
5 horrible book. But at least I was able to get  
6 different people's opinions and say, what do you  
7 think? What do you think about our logo?

8 Even prior to going public we did a  
9 whole rebranding exercise. This is now our new  
10 logo as well. I just like to solicit feedback  
11 from different people and collaborate. Obviously,  
12 there's different schools of thought. One school  
13 of thought is to get feedback and let people know  
14 what you're onto, but then with the fear that they  
15 might copy. Or the other school of thought is if  
16 you do something you keep it private because of  
17 fear of all that or you get better advice. I've  
18 always been in the school of thought is you want  
19 to try and get input and opinions. I just wanted  
20 to put that in there because, you know, that's how  
21 I improve myself.

22 MS. DECKER: Did you meet Mr. Wey

1 through the CleanTech acquisition or how did you  
2 meet him?

3 MR. KANG: I did, yes. Actually, I  
4 think it was early 2014, and this goes back to,  
5 you know, what I was talking about earlier. I  
6 reached a point where I was trying to grow my  
7 company and it got to a point -- and it was boot  
8 strap, meaning that I self-funded it. There's a  
9 lag time between when our customers pay us versus  
10 when I have to make payroll. So I can handle two  
11 employees, maybe 12, and even 30, but as soon as  
12 we started getting to about 50 payroll and  
13 employees that I have to pay on a monthly basis  
14 and we didn't have any hard assets, right? I  
15 can't go to the bank and say, here's my real  
16 estate. Here's my tractor. Here's the warehouses  
17 for collateral.

18 So they said, what collateral do you  
19 have? I said, well, we have accounts receivables.  
20 Maybe we can pledge that, but it gets very  
21 expensive. So I said, well, what are my options?  
22 Can I raise some money? Can I do private equity?

1 So through this process I learned one of the ways  
2 we can raise capital is actually through going  
3 public. So if we go public now we have a  
4 currency. To me, being a technology firm I also  
5 have a way to give stock options to my early  
6 employees as well, so now they have a vested  
7 interested to participate for the upside.

8 So I give stock options. We have a  
9 currency to be able to acquire companies. So this  
10 whole concept of going public was new to me. I  
11 met with Holland and Knight and NYGG Asia through  
12 Roger Lee and the lawyers kind of put the deal  
13 together. I've never done a merger like this  
14 before. So we had our counsel and they had their  
15 counsel. This was Rodger Lee and NYGG Asia and  
16 Holland and Knight said, well, there's CleanTech  
17 and that's how the deal got consummated. So  
18 through that process that was the first time I met  
19 Benjamin Wey, and that's one of the reasons why  
20 we're here today.

21 MR. DONOHOE: Let's flip over to Slide  
22 24. Tejune had mentioned the book and, obviously,

1 the staff have expressed the view that Mr. Kang's  
2 communication with Michaela Wey, Mr. Wey's wife  
3 there's something nefarious about that.  
4 Obviously, Tejune was sending the book all over  
5 the place.

6 MR. KANG: Not too many people -- I  
7 mean, no one said it was good either.

8 MR. DONOHOE: So we listed a bunch of  
9 folks here that also got similar emails to what  
10 Michaela Wey got. By the way, Michaela Way never  
11 responded to that email relating to the book.

12 MR. KANG: Dave, I want to put it on  
13 note that these other emails to Dave Smith and  
14 Chris Bennett, and Ray and so forth, these aren't  
15 in the NASDAQ staff's records because these  
16 weren't requested, but I'd be more than happy to,  
17 obviously, share this, and even get input on the  
18 book too. But anyhow, please continue.

19 MR. DONOHOE: So let's jump ahead to  
20 Slide 25. Putting aside the company's past  
21 interactions with Mr. Wey, what's most important  
22 is what's the current relationship with Mr. Wey?

1 Obviously, in the wake of the DOJ and SEC  
2 allegations the company took action. On September  
3 25 the board adopted a resolution. They said  
4 we're severing all ties and all communications  
5 with Mr. Wey. The reality is all ties and  
6 communications were severed with him immediately  
7 after the arrest, but the board did it formally on  
8 September 25.

9 In addition to that, the company has  
10 reached out to NYGG Asia to enter into a  
11 shareholders' agreement with NYGG Asia. That's  
12 now been executed. It was executed just a couple  
13 of days ago and it pertains to all the shares held  
14 by NYGG Asian and its affiliates. It neutralized  
15 the vote- able shares because its shares must be  
16 voted in proportion to the other common shares  
17 outstanding, and it limits the transfer and sale  
18 of those shares. So we have the voting agreement,  
19 Exhibit 3 in the book of exhibits.

20 MR. KANG: Exhibit 4, I think.

21 MR. CAFFREY: Dave, could somebody --  
22 maybe I'm jumping ahead, could we get a little bit

1 of color as to what the relationship is with NYGG  
2 Asia and why they would be bound by such an  
3 onerous agreement?

4 MR. DONOHOE: That's exactly what I was  
5 going to talk about right now.

6 MR. CAFFREY: Sorry.

7 MR. DONOHOE: That works for me. One  
8 last thing, with the NYGG Asia shares all their  
9 shares are on certificate form. They all carry  
10 legends, so the company is able to go ahead  
11 through its transfer agent and make sure that it  
12 has control over when those legends come off, so  
13 the shares are truly blocked. There's also a  
14 standstill provision in the agreement so they  
15 can't buy new shares.

16 NYGG Asia has also given us an affidavit  
17 specifically addressing what its relationship was  
18 with Mr. Wey. I use the term was because NYGG  
19 Asia also severed its ties with Mr. Wey following  
20 the SEC and DOJ allegations. What they have said  
21 in the affidavit is that they had a co-branding  
22 arrangement with NYGG New York. NYGG New York is

1 actually NYG Capital. NYGG Asia doesn't have a  
2 presence in New York and so they would use NYG  
3 Capital as their New York presence if they had  
4 people come to New York. They would have NYG  
5 Capital introduce them, show them around, that  
6 type of thing.

7           What they've said is they would pay them  
8 an annual consulting fee. They didn't tell us how  
9 much they were paying, but that was the  
10 relationship and they've told us that relationship  
11 is now terminated in the affidavit. They also  
12 stated that there is not, and there never has  
13 been, any cross ownership between NYGG Asia and  
14 NYG Capital, and that Mr. Wey has no beneficial  
15 interest in those shares that are held by NYGG  
16 Asia.

17           Now, the question is, why would they be  
18 willing to enter into this agreement, you know,  
19 given what their position is with respect to Mr.  
20 Wey? The reason is because we went to them and we  
21 said NASDAQ believes that Mr. Wey is associated  
22 with you. Whether it's right or it's wrong that's

1     what they believe, and so the company is at risk  
2     of being delisted and we need you to enter into  
3     this shareholder agreement. The company was not  
4     the conduit for dealing with NYGG Asia. I was.  
5     So I had all the communications with Roger Lee at  
6     NYGG Asia. They said, look, you know, we support  
7     Tejune Kang. We support the company. Whatever  
8     you need us to do we'll do. We're not planning to  
9     sell the shares anytime soon anyway, so they've  
10    entered into this agreement.

11             The last point on Slide 25 is that Mr.  
12    Kang did have a loan with Michaela Wey and that  
13    loan has now been satisfied and that's in there as  
14    Exhibit 5. So that was paid just a few days ago  
15    in full.

16             MR. KANG: I wanted to add one more  
17    thing to that. I believe part of the reason why  
18    Roger Lee believes in me, TJ and I we met with  
19    him. I told Roger --

20             MR. DONOHOE: Explain TJ.

21             MR. KANG: I'm sorry. So TJ is one of  
22    our VPs out of Cincinnati, Ohio. So we hired TJ



1 in 2011. He started off as an engineer and I saw  
2 him grow and he was able to buy a new house and  
3 refinance and do all kinds of great stuff. That's  
4 another great thing about having a company. We're  
5 doing good stuff for employees. But so TJ, I said  
6 TJ, I think we're onto something here. This  
7 digital marketing -- again, this is 2010. The  
8 world is in the middle of this recession. I said,  
9 TJ, I think we can do some really cool stuff with  
10 digital marketing. We've been successful in web  
11 marketing, personalization on web content, but  
12 let's try and build this thing out.

13 So as TJ and I looked at let's hired  
14 more people. We kept hiring more engineers. We  
15 kept building off of that and we ended up meeting  
16 Roger Lee from NYGG Asia. We told Roger Lee,  
17 because obviously, through NYGG Asia they have 35  
18 million shares, something like that. We said,  
19 Roger the opportunity is now. We can go global.  
20 We can grow. We have this huge thing where we can  
21 do 24/7, 365 days a year support. We're not going  
22 to be like a typical agency, like an ad agency.

1 We're not going to be a software company. We're  
2 going to be a digital solutions company, a one  
3 stop shop for a chief marketing officer, and that  
4 resonated well with him. I think by doing that  
5 we've gained really strong support.

6 MR. CAFFREY: Let me ask you, they had  
7 35 million shares of your company?

8 MR. KANG: Yes.

9 MR. CAFFREY: How did they get that?

10 MR. KANG: Let me explain the merger.

11 So what happened with CleanTech was my  
12 understanding of CleanTech was they had a creditor  
13 and NYGG Asia -- CleanTech owed NYGG Asia \$16  
14 million.

15 MR. CAFFREY: Okay.

16 MR. KANG: Roughly \$16 million. So 6  
17 Dimensions was my company, a California based  
18 company, merged with CleanTech. When we merged  
19 both sides agreed. The lawyers said, hey, when we  
20 do this deal we want to basically have zero debt.  
21 We both agreed to that. I had some investors. I  
22 had some friends and family that put some money

1 in, \$100,000, \$200,000. We converted their debt  
2 into equity so now they became shareholders, and  
3 the same thing happened on the CleanTech side.  
4 The merger occurred and through that process the  
5 \$16 million, I guess through the cap tables,  
6 became shares.

7 MR. CAFFREY: Right.

8 MR. KANG: But I think the thing to  
9 observe here is NYGG Asia they never held -- and  
10 this is, I would say, my desire was they never  
11 held a board seat. They never held an officer  
12 position or anything like that because I felt  
13 compelled and I've heard a lot, again through  
14 networking, collaborating with other  
15 entrepreneurs, is you've got to be very sensitive  
16 to anything that might stifle the growth of the  
17 company and the vision. So I was very cognizant  
18 of when merging how much control am I giving up.

19 Then I said, if I'm going to do this I  
20 want to be the chairman. I still want to be the  
21 CEO and I want to grow the company, so that was  
22 part of the deal. They said, we believe in your

1 visions. NYGG Asia, Roger Lee, said we get it.

2 We understand it. Go for it. That's what

3 happened.

4 MR. CAFFREY: What, if any, is your  
5 understanding of what role Mr. Benjamin Wey had  
6 with NYGG Asia?

7 MR. KANG: I wasn't exactly sure of what  
8 the relationship was. My understanding was he was  
9 a consultant and he gave us advice, and he was  
10 probably getting paid by NYGG Asia.

11 MR. CAFFREY: Was he an employee there?

12 MR. KANG: He's an employee of NYG  
13 Capital which is in New York.

14 MR. CAFFREY: New York.

15 MR. KANG: My understanding is they are  
16 a co-branded entity. So you've got Roger in  
17 China and you've got Benjamin Wey in New York and  
18 he would give us advice. Again, I would say, what  
19 do you think about our logo or if we're going to  
20 do this deal or how -- we had an NDA in place.  
21 Once he got arrested I was like, oh my god. This  
22 is not good. So we severed all ties and said, you

1 know, I don't know how all this is going to go  
2 down, but I just know it's bad for us.

3 At the end of the day, I have employees  
4 that are concerned. It's extremely disruptive.  
5 We also have the press that was on us. I had  
6 friends and family calling me going what's going  
7 on? I said, I don't know who this guy was. I  
8 don't know what happened. But, obviously, he  
9 might be a bad guy, so we severed all ties.

10 MR. CAFFREY: But you must have had a  
11 pretty close relationship with him?

12 MR. KANG: Yes.

13 MR. CAFFREY: A close personal  
14 relationship and it allowed you to borrow money  
15 from his wife.

16 MR. KANG: Yes. I have met his wife. I  
17 met his kids on occasion as well. Again, up until  
18 the day he got arrested I didn't know or suspect  
19 he was a bad guy. I mean, that's --

20 MR. CAFFREY: Yeah, I can appreciate  
21 that.

22 MR. KANG: At the time he seemed like a

1 smart guy. You know, if I asked him a question he  
2 knew the answer. But the thing is, he made  
3 introductions for me. Introductions to people I  
4 didn't know and I think NASDAQ staff also observed  
5 that as well, so I was able to make --

6 MR. FINI: Who'd you make introductions  
7 to?

8 MR. KANG: I talked to David Bonderman,  
9 for example, at TPG Capital. I talked to Len  
10 Potter at Wild Cat. I talked to Citi Bank and  
11 Morgan Stanley and J.P. Morgan. These were  
12 people I didn't know. Again, I'm a business tech  
13 kind of person from California moving to New York.

14 MR. CAFFREY: Right.

15 MR. KANG: I didn't have the same type  
16 of contacts. Some of his advice was good. Some  
17 of it was kind of bad, but there's also other  
18 people I sought too. I mean, there's four or five  
19 other people I talked to more on a regular basis.  
20 I talked to Jerry Kahn. I talked to Louis Schiff.  
21 These were different peer groups. I sought out  
22 advice. He would tell me certain things and I

1 would say that's good or bad and I would weight  
2 them. Again, I severed all ties and said this  
3 isn't good for the company and that was the  
4 relationship.

5 MR. CAFFREY: Did you ever pay him as a  
6 consultant?

7 MR. KANG: No, no. I never offered  
8 either. I mean, if someone's giving me advice I'm  
9 not going to say, here, let me give you some  
10 money.

11 MR. CAFFREY: No, I mean, he could have  
12 asked you?

13 MR. KANG: He did, yeah. I said, well,  
14 you know -- he never asked me directly, so I  
15 wasn't confronted with that. That's where my  
16 understanding of that relationship -- you know,  
17 frankly, at the end of the day it's none of my  
18 business. I mean, I didn't want to go to Roger  
19 and say, hey, how much are you paying this guy?  
20 What are you doing? That's what it was.

21 MR. DONOHOE: Why don't we flip over to  
22 Slide 27. The staff probably hearing this

1 determination is based on a number of misplaced  
2 and inaccurate conclusions, and so let's start, I  
3 guess, with something that we saw for the first  
4 time in the hearing memo is that the staff  
5 insinuated that 6D is not a real entity. What  
6 they say is 6D Global Technologies describes  
7 itself as a digital business solution. The  
8 company asserts that it is focused on digital  
9 technology solutions and becoming a one stop  
10 provider for chief marketing officers.

11 I mean, I've probably seen hundreds, if  
12 not thousands, of the hearing memos. I've never  
13 seen that before. I could understand if that was  
14 going to be one of their concerns and they were  
15 going to spend a portion of the memo attacking the  
16 business, but they didn't. They just kind of  
17 threw that out there to disparage the company.  
18 They also used the trading volume to support a  
19 claim of market manipulation when the staff knew,  
20 or should have known, that 6D's trading volume  
21 increase was due to the inclusion of the Russell  
22 2000.



1                   They rely extensively on mere  
2                   allegations that pertain to other entities and  
3                   that involved those entities in years earlier,  
4                   years before the company was ever a company.  
5                   They've mischaracterize both the CleanTech and  
6                   Discover decisions. They continue to rely on the  
7                   discredited allegations related to the Discover  
8                   action.

9                   Let's flip over to Slide 28. Actually,  
10                  I'm going to jump over to Slide 29, so let's talk  
11                  about the CleanTech delisting determination and  
12                  the SEC's reversal of that. The staff stated in  
13                  their delisting letter in July 2013 the SEC  
14                  remanded the delisting determination of CleanTech  
15                  to NASDAQ on procedural grounds. Well, that's not  
16                  what happened at all. The SEC reversed the  
17                  delisting determination finding that NASDAQ's four  
18                  basis to concluded CleanTech had intentionally and  
19                  repeatedly withheld documents did not exist in  
20                  fact. They said that the evidence did not support  
21                  a finding that staff even requested the documents  
22                  at issue. The evidence did not support a

1 conclusion that CleanTech intentionally failed to  
2 provide information. The evidence did not show  
3 that CleanTech should have considered the  
4 documents at part of the request. That NASDAQ's  
5 position that CleanTech had a pattern of  
6 withholding documents was not substantiated.

7 When the SEC says that the basis didn't  
8 exist in fact that's a critical component of any  
9 exercise of discretion. Certainly, we acknowledge  
10 that NASDAQ has broad discretion, but the specific  
11 grounds upon which the exercise of that discretion  
12 is based must exist in fact. That's what we're  
13 here to talk about today. Do the grounds that  
14 they've raised exist in fact?

15 We're going to flip over to the next  
16 slide which involves Discover and I'm going to  
17 turn it over to Tom who was counsel for the  
18 company in the Discover litigation.

19 MR. FINI: First I'd like to thank the  
20 Panel very much for taking the time to hear 6D's  
21 information today. I appreciate you hearing me.  
22 Mr. Kang asked me to come today because the

1 Discover action and allegations made in that  
2 action were relied on by staff, and Mr. Kang  
3 wanted to make sure that if there were any  
4 questions about that, that -- I was actually one  
5 of the attorneys, one of the co-counsel  
6 representing 6D in that litigation. I was at the  
7 hearing personally and so I wanted to spend a  
8 couple minutes to explain to the Panel what  
9 actually happened in that case and then take any  
10 questions if you have any.

11 As we know, the staff in its November 20  
12 delisting letter relied significantly on  
13 allegations that were made by a company called  
14 Discover. Discover filed a federal lawsuit in  
15 federal court, southern district of New York in  
16 September of 2015, just this past September.  
17 Discover filed that action as a related case in  
18 front of a respected judge, Judge Kevin Castelle,  
19 who's been on the bench for many years. They  
20 filed that lawsuit as a related case in front of  
21 Judge Castelle because they knew the plaintiff who  
22 had invested in 6D and wanted to try to get their

1 money back knew that Judge Castelle was presiding  
2 over the Benjamin Wey SEC action. So they availed  
3 themselves of what they thought would be the  
4 benefit of getting the notion that since 6D has  
5 some connection to Ben Wey, and since Ben Wey now  
6 has an SEC proceeding let's get in front of this  
7 judge.

8           They hired Gibson Dunn, one of the  
9 biggest law firms in the world, and they had an  
10 army of attorneys who spent hundreds of thousands  
11 of dollars seeking what's called a motion for an  
12 attachment. What that means is that when you go  
13 into federal court you can get an attachment that  
14 seizes the \$10 million they invested in 6D. You  
15 can seize it and freeze the company from using  
16 that money. But if you want to do that with your  
17 army of attorneys from a big New York law firm  
18 like Gibson Dunn there's a standard you have to  
19 reach. You have to meet the standard in front of  
20 a federal judge.

21           The standard is you have to show a  
22 likelihood of success on the merits. You don't

1 have to prove your case entirely. You have to  
2 show at least there's a likelihood. The judge  
3 wants to see that based on the evidence and the  
4 hundreds of exhibits that were in front of him,  
5 and the well-paid attorneys charging \$1,000 an  
6 hour that they wanted to -- you have to show a  
7 likelihood of success on the merits.

8 So they went into court and they filed  
9 an affidavit in which -- it's a self-serving  
10 affidavit in which Mr. Kirkland of Discover Fund  
11 alleged that at a meeting that took place Ben Wey  
12 claimed that he controlled 6D and that he could  
13 control the stock trading of 6D. This was the  
14 allegation that was made in the affidavit. Well,  
15 Judge Castelle held a full blown hearing. There  
16 were hundreds of pages of exhibits. There were  
17 dozens of exhibits. There were affidavits. There  
18 was the SEC complaint. The judge deliberated  
19 carefully after a full blown hearing for weeks.  
20 He took a couple, at least two to three weeks, to  
21 issue his 28 page decision. On October 30 he  
22 issued a 28 page decision in which he refuted all

1 11 of the plaintiff's claims, and specifically  
2 held that the allegation that Benjamin Wey  
3 controlled 6D or was the alter ego of 6D was -- he  
4 discredited and said there had not been shown a  
5 probability of success on the merits. He  
6 conclusively ruled that. The attachment was  
7 conclusively denied. It was completely rejected.  
8 And when Gibson Dunn's lawyer was in front of the  
9 judge he said, and this is at Exhibit 6, he said  
10 to Judge Castelle in open court, on the record,  
11 the plaintiff said we will commence an arbitration  
12 against the company within the 30 day period.

13 If you're seeking an attachment you have  
14 to start your arbitration. These claims were  
15 subject to arbitration. You want a federal court  
16 to freeze up \$10 million you better have a real  
17 arbitration. So they promised the judge they  
18 would file the arbitration in 30 days. So the  
19 judge issues his decision October 30, denies the  
20 attachment in its entirety, discredits the  
21 allegations, and I was there for all of it. Then  
22 they never filed, the plaintiff never filed the

1 arbitration. You know why? Because in the  
2 arbitration we would go in with the judge's 28  
3 page decision and say, the federal judge said  
4 there is no merit to the claims, so the  
5 arbitrator, right off the bat, would have the  
6 benefit of a judge who's been sitting on the bench  
7 for over ten years, and they gave up. They gave  
8 up.

9           They have not filed the -- they haven't  
10 even filed the arbitration. The federal action is  
11 dead because they conceded in arbitration. So I  
12 pick up the delisting letter and I know the NASDAQ  
13 staff works very hard, great respect for them, but  
14 on this issue I was there and they weren't there.  
15 I know there's a lot of -- you know, when you hear  
16 Benjamin Wey some people get excited. Everybody  
17 who is maybe Chinese or has a Chinese relation  
18 with Ben Wey or Asia that everybody must be doing  
19 something wrong. I don't know what caused this  
20 language to appear in the letter, but it says the  
21 motion for attachment was denied pending discovery  
22 among the parties. So I read that and it says,

1 the motion for attachment was denied pending  
2 discovery among the parties. That sounds like the  
3 motion for attachment was denied and there's  
4 something pending. That this action is pending.  
5 This serious accusation that Ben Way controlled 6D  
6 is going to be litigated now. That's what a  
7 reader reading that would think.

8 Then they rely on the allegations in the  
9 affidavit. They say that Benjamin Wey informed  
10 Discover that he and his friends are trying to  
11 control all the pre- trading of the shares in the  
12 company. They cite these allegations. But when  
13 they wrote this staff letter it was November 20.  
14 The judge issued his decision almost a month  
15 earlier on October 30 already rejecting those  
16 claims. So when we submitted our response to the  
17 delisting letter, as you can see on Slide 30, and  
18 Page 30 is a little bit hidden in the blue area.  
19 If you look at it there's a chart with what the  
20 staff stated and then what the actual facts are.

21 The staff, on the left side you'll see  
22 the staff said the motion for attachment was



1 denied pending discovery among the parties which  
2 leads a reader to think that there's some  
3 attachment proceeding that's awaiting discovery or  
4 that there's something going on in the case that's  
5 awaiting discovery. The fact of the matter is the  
6 case is dead, for practical purposes, because the  
7 judge rejected the allegation. The judge found  
8 there was not likelihood of success on the merits,  
9 and Discover has given up. They haven't filled  
10 their arbitration. You wouldn't have known that  
11 had we not put that in the letter and had said  
12 that. Yet, interestingly, it was information that  
13 was available to the staff because they read the  
14 judge's decision.

15 On the second point the staff says, the  
16 court did not discredit the information contained  
17 in the affidavit or otherwise determine the  
18 information was invalid or inaccurate. But the  
19 fact of the matter is that the judge specifically  
20 read the affidavit, referred to the fact that the  
21 affidavit contained a hearsay statement that was  
22 opposed by Mr. Kang, and was unsupported by any

1 documentary evidence. The mountain of documents  
2 that Gibson Dunn put in charge hundreds of  
3 thousands of dollars for their client. There was  
4 not one document that actually showed, and I  
5 haven't seen a document in anything that we've  
6 seen, maybe Mr. Wey gave his opinion about how a  
7 logo looks. There is not one document that shows  
8 actual control, that Mr. Wey controlled the  
9 company.

10 The judge specifically cited the  
11 affidavit and they said that. He said it's not  
12 substantiated and there's no likelihood of success  
13 on the merits. It's on Page 16 of Exhibit D to  
14 the January 4 submission that we sent in. If you  
15 look at Exhibit D, Page 16 the judge, in his own  
16 words, says, "Discover has not shown a likelihood  
17 of success in proving that Wey actually controlled  
18 and dominated 6D." That's the judge's language.

19 So one would have thought that when this  
20 allegation was referred to by staff, staff could  
21 have chosen two things. They could have either  
22 not relied on the affidavit at all since the

1 federal judge discredited it. Or if they wanted  
2 to reference it they might have said -- you would  
3 have thought they would have said federal judge  
4 discredited it. It didn't support allege -- there  
5 was not supporting evidence that showed any  
6 likelihood of success. They didn't say that.

7 Then I also wanted to point out that the  
8 federal judge in the case invited the plaintiff's,  
9 told the plaintiff's --

10 MR. KANG: Tom, before you go to that I  
11 just want to comment on that because it's just  
12 weird. I'm sitting hearing you talking about me,  
13 so I want to chime in since it's my affidavit and  
14 so forth. For the record, whatever Mr. Kirkland  
15 said he never said any of that. I try to make  
16 that clear. He said Ben Way controls the company.  
17 He does all this stuff. That was never said at  
18 all. I mean, I was there. I couldn't believe my  
19 eyes when I saw that. I even talked to Tom. I  
20 talked to K&L Gates. I said, can someone do that?

21 MR. FINI: Don't disclose privilege.

22 MR. KANG: Okay.

1                   MR. FINI: You can talk about what  
2 happened at the meeting.

3                   MR. KANG: That never occurred and  
4 that's why I had my affidavit. Personally, again,  
5 I go back to why I started the company. I love my  
6 company. I love my employees. I love what we do  
7 and I'm passionate about it. There's such a huge  
8 opportunity for this digital marketing, being  
9 global. We're elevating American companies. We  
10 have Citrix. We have Auto Desk, LinkedIn. We  
11 have Apple. We have Nike. We're bringing them  
12 into a global presence and helping them become  
13 even bigger and better.

14                   I don't want to get sidetracked, but  
15 that's something I'm passionate about because it  
16 completely contradicts what I said. I was  
17 concerned during the case going what's going to  
18 happen? What's going to happen? Anyhow, Tom, I  
19 just wanted to comment on that.

20                   MR. DONOHOE: If I could add just one  
21 other thing. Wouldn't you think if Benjamin Wey  
22 told Kirkland that that Kirkland would have blown

1 a gasket at the time? He said, my god, we've  
2 invested \$10 million into this company and this  
3 guy just told me he controls it, controls all the  
4 public float? That was before August. He would  
5 have gone bananas if someone had told him that.

6 MR. FINI: In fact, Mr. Kang put in an  
7 affidavit that the judge cites in his decision in  
8 which Tejune says, if that were said it's odd that  
9 weeks would have gone by without any objection in  
10 writing. There's not one email. There's not one  
11 thing that can substantiate any shock at hearing  
12 something as shocking as that, so we can see why  
13 the judge reached his decision.

14 But in any event, another very important  
15 fact is that at the hearing the judge told the  
16 plaintiffs I want you to send a letter to the  
17 Department of Justice and the SEC and I want them  
18 at the hearing. The Department of Justice and the  
19 SEC arrived at the hearing on October 5, 2015.  
20 They had the right to seek discovery. They had to  
21 right to intervene. The federal judge who  
22 presided over the SEC proceeding against Benjamin

1     Wey had formally invited them to appear.  They  
2     respectfully stood up.  They said, we're here  
3     because you asked us to be here.  The hearing went  
4     on for a couple of hours and the Department of  
5     Justice lawyer stood up and asked if he could be  
6     excused.  He had no interest.  It's on the record.  
7     It's on Exhibit 6 at Pages 2 and Pages 44, 45.  At  
8     Pages 44, 45 of Exhibit 6 you will read that the  
9     Department of Justice and SEC lawyers asking to be  
10    excused from the hearing.  Why?  Because there is  
11    not a shred of evidence, and there's never been  
12    any allegation that Wey controlled 6D.  The  
13    Department of Justice and SEC now were invited to  
14    a law suit where they could have jumped in, gotten  
15    free discovery.  They could have served a subpoena  
16    and got information, but based on all the  
17    information they had and all of the stuff they've  
18    looked at after seizing information from Mr. Wey  
19    and his computers, and all the things you do when  
20    you arrest people they don't have any interest in  
21    this whatsoever.

22                    Yet, in the hearing memo from the staff

1       there's a footnote on Page 1 of the January 21,  
2       2016 hearing memo.  It's Footnote 2.  "It has also  
3       been reported that prosecutors informed the judge  
4       presiding over Wey's trial that they intend to  
5       bring additional charges into new indictment."  
6       Well, other than just blowing smoke and maybe  
7       because at one point Tejune knew Mr. Wey that  
8       doesn't prove anything.  In fact, the facts are  
9       that the SEC and the DOJ were so interested they  
10      walked out.

11                       Finally, I do want to point out that  
12      after we made -- we made a lot of these arguments  
13      in our January 4, 2016 letter.  We pointed out the  
14      truth about what happened in Discover litigation  
15      and why the allegations in the Discover litigation  
16      should be irrelevant.  The staff's response to it,  
17      again, with respect, I don't think is fair.  On  
18      Page 5 of their January 14, 2016 memo if you look  
19      at Footnote 23 it's very telling.  Because they  
20      now say in light of what we responded and what I  
21      put into the January 4 memo they say that now the  
22      affidavit that they relied on they say, well, "Our

1 determination did not place heavy reliance on the  
2 Discover complaint, but rather it was one fact in  
3 the mosaic of information demonstrating Wey's  
4 involvement in the company." It was one fact in  
5 the mosaic of information.

6           So if you're going to build a mosaic  
7 each of the tiles still have to have substance.  
8 Each tile still has to -- you can't build a  
9 mosaic. It's really a side step. Now they look  
10 at the affidavit and the truth that it was  
11 discredited and now want to say, well, it's just  
12 one of the facts. Well, you know, that's not  
13 really fair to the company. The fact is either  
14 substantiated or it's not, and if it's not than  
15 really it's not relevant. If there is something  
16 else that substantiates control let's see it.

17           I saw that they rely on email where  
18 Tejune asked Wey's opinion about the logo. That  
19 doesn't show control to me, at least. They also  
20 said that, "Furthermore, it is important to note  
21 the Discover decision was not a decision on the  
22 merits of the lawsuit." But that's not true. The



1 judge who ruled that to get an attachment you have  
2 to show a likelihood of success on the merits. So  
3 when litigators go into federal court on  
4 injunctions and attachments they spend hundreds of  
5 thousands of dollars doing what we call a mini  
6 trial. It's a mini trial. In a space of a week  
7 or two you run into court with all of these  
8 exhibits and you have to show a likelihood of  
9 success on the merits. You win or you lose.

10 It was show time. It was the main  
11 event. Discover lost. That case is dead and it  
12 shouldn't have been relied on. The response in  
13 Footnote --

14 MS. HORTON: I think your point is  
15 taken.

16 MR. FINI: Thank you.

17 MS. HORTON: I think your point's taken.

18 MR. DONOHOE: So let me go ahead and  
19 I'll pick it up on Slide 31. We'll turn to  
20 shareholder issues. As the Panel knows, you need  
21 300 round lot shareholders to qualify for initial  
22 listing, and then once you're listed you need 300

1 public shareholders for a continued listing. So  
2 the staff had indicated that they had information,  
3 evidence in 321 round lot shareholders. We  
4 believe there are probably a few more than that at  
5 the time the company was listed. But, you know,  
6 certainly that number exceeds the requirement.

7 At the end of 2015, we'll just point  
8 out, and it's not relevant to that determination,  
9 but at the end of 2015 the company had more than  
10 1,000 public shareholders and the vast majority of  
11 those, 778, were non-objecting beneficial owners.  
12 They're NOBOs. So they hold their shares,  
13 actually, at a registered broker dealer, and more  
14 than 600 of those were round lot holders.

15 Let's flip over to Slide 32. Again, we  
16 will presume that the staff's calculation of 321  
17 is accurate. Staff has no evidence that 22 of  
18 those shareholders should be retroactively  
19 disallowed. The vast majority of the company's  
20 shareholders got their shares in private  
21 placements or in convergence of debt to equity or  
22 they hold their shares at registered broker

1 dealers. So there's really not question with  
2 those.

3 But the primary basis for the staff's  
4 concerns seems to be that these shareholders have  
5 foreign addresses. I guess we would first say  
6 it's discriminatory to discount investors on the  
7 basis of their foreign address. It's illogical  
8 based upon the publicly available anti-money  
9 laundering risk analysis for these jurisdictions.  
10 For example, based on the AML index for 2015  
11 report it ranks these countries according to their  
12 risk. Of the 37 investors that they pointed out  
13 32 are from countries that have a comparable rank  
14 to the United States or lower risk than the United  
15 States. The five countries that those investors  
16 are from are: Canada, Germany, Italy, Moldova,  
17 and Romania. There are five investors that are  
18 from the Ukraine, but even the Ukraine is not in  
19 the bottom quadrant of the profile.

20 In addition, there's not much that the  
21 company could do to go out and verify those  
22 investors, but one of the things that we could do

1 was we could run their names through the Office of  
2 Foreign Assets Control list, the OFAC list, which  
3 we did to see if any of them came up. The OFAC  
4 list is a reference tool that provides notice of  
5 actions by OFAC with respect to specially  
6 designated nationals and other person whose  
7 property is blocked. None of the 37 investors  
8 showed up on that list.

9 Let's jump over to Slide 33 and let's  
10 talk about the market manipulation. Staff, again,  
11 relied on the allegations and the DOJ and the SEC  
12 actions against Mr. Wey and his affiliates. The  
13 SEC case law specifically precludes reliance on  
14 mere allegations. We can give you a couple of  
15 cases to that effect if you would like. We have  
16 them here with us, but I think that the staff  
17 probably knows about that case law.

18 The allegations in those proceedings,  
19 they don't pertain to 6D. The allegations as to  
20 CleanTech proceed 6D's existence as a public  
21 company by nearly four years. Most importantly,  
22 staff failed to note that NASDAQ had provided

1 explanations for the shares' volatility and for  
2 the volume increase. It was not share price  
3 manipulation.

4 If we turn over to the next page. Staff  
5 had focused on the fact that the share volume was  
6 \$1,604,000 on June 26 and that therefore, that  
7 evidence is stop manipulation. Well, that's  
8 troublesome to us because NASDAQ itself predicted  
9 the volume that day because of 6D's addition to  
10 the Russell 2000. Basically NASDAQ said in an  
11 email to the company on June 17, nine days in  
12 advance, "As you are probably aware the Russell  
13 family of index funds will perform its annual  
14 reconstitution on Friday, June 26. Trading in  
15 many U.S. stocks, particularly additions to or  
16 deletions from the Russell index will see  
17 significant trading volume at the close and in  
18 afterhours trading that day. 6D is being added to  
19 the Russell 2000 and will therefore, likely see  
20 significant demand from index funds looking to  
21 replicate the new Russell weightings. Convergenx  
22 has prepared an analysis of expected net demand by

1 indexers in your company's stock." They have  
2 provided this to us and estimate that, "Index  
3 demand will be 1,521,242 shares, about 72.9 times  
4 the 30 day average trading volume in your stock."  
5 I would ask you to go to Exhibit 7 and look at the  
6 entire email.

7 MR. KANG: Again, Dave. It's  
8 interesting because I'm actually present, but the  
9 email was sent to me, so it's weird for people to  
10 talk about me because I'm here. I'm more than  
11 happy to answer questions, but I have a lot of  
12 pride in my company. I want to do the right  
13 thing. I've always been very transparent. I'm  
14 here to build a great company with great people  
15 doing cool things.

16 So I kept in touch with Steve Brown  
17 quite a bit at NASDAQ. I would email Steve and  
18 say, hey, what's going on? Is there a  
19 manipulation going on? One of the things he said,  
20 oh by the way, don't worry. There's going to be a  
21 huge volume on these days. So I got this email,  
22 so I was also surprised that staff reached a

1 conclusion that there's manipulation when a NASDAQ  
2 staff member, Steve Brown, email me and said heads  
3 up, there's going to be a huge volume.

4 I've always as, not just CEO, but  
5 founder and just it's my company. I take great  
6 pride in understanding what's going on and things  
7 of that nature. I thought that would be helpful  
8 to provide that as an exhibit.

9 MR. DONOHOE: I'm going to wrap up on  
10 Page 35. This just references a second email that  
11 NASDAQ sent to the company. They sent this to  
12 them on July 9. "The trading volume was heavy  
13 today, more so in the morning than afternoon. It  
14 appears the higher prices seen in the morning gave  
15 way to profit taking in the afternoon. Below I  
16 list the reporting brokers that were in the stock  
17 today, and names such as Raymond James and J.P.  
18 Morgan suggest activity from larger portfolio  
19 managers."

20 So with that I'm going to now turn it  
21 over to the audit committee members that are on  
22 the phone and to Blank Rome whose counsel for the

1 audit committee. So, Pete, you want to start?

2 MR. CHRZASZCZ: Certainly. Good  
3 morning, everyone. My name is Pete Chrzaszcz.  
4 I'm on the audit committee. Did you want me to  
5 discuss anything in particular or did you have  
6 questions for me?

7 MR. DONOHOE: You can just kind of give  
8 your views on where we are with the audit  
9 committee investigation, and then Blank Rome can  
10 talk about where they are in the investigation.

11 MR. CHRZASZCZ: Okay. So Blank Rome,  
12 obviously, is our audit folks who are doing the  
13 investigation. They were, basically,  
14 quote/unquote hired by the audit committee to do  
15 this investigation. As far as I know, the  
16 investigation is proceeding. We are actively  
17 participating in everything that they had  
18 requested. Quite honestly, I think Blank Rome can  
19 speak more in detail as to what their progress and  
20 success on the investigation to date.

21 MS. GITLITZ: Hi. This is Michelle  
22 Gitlitz from Blank Rome. My partner, Barry



1 Genkin, and I are conducting, and the majority of  
2 the work. So far based on -- we've been reviewing  
3 a large volume of documents we received. We  
4 anticipate receiving additional documents, but in  
5 all events we hope to have our investigation  
6 completed by mid to late February.

7 We've found the company to be very  
8 cooperative in providing access to documents and  
9 information. We're just proceeding in the manner  
10 that we deem appropriate, and again, hope to be  
11 completed no later than the end of February. I'm  
12 happy to answer questions if you have any.

13 MS. HORTON: What's the scope or charge  
14 of the investigation?

15 MS. GITLITZ: The scope of the  
16 investigation is very similar to the issues raised  
17 by NASDAQ, and we have no reason at this point in  
18 time to expand that scope.

19 MR. DONOHOE: Michelle, that's because  
20 the investigation is primarily a response to the  
21 NASDAQ delisting letter?

22 MS. GITLITZ: Correct.

1 MS. HORTON: Okay.

2 MR. DONOHOE: Thank you, Michelle.

3 MS. GITLITZ: Sure.

4 MS. DECKER: The investigation, just  
5 confirm the investigation commenced when?

6 MR. DONOHOE: Michelle, did the  
7 investigation commence on December 8?

8 MS. GITLITZ: On or about December 8,  
9 correct.

10 MR. DONOHOE: So I'll go ahead and wrap  
11 up at this point. Again, we certainly acknowledge  
12 that NASDAQ has brought discretion. The specific  
13 grounds upon which that exercise of discretion,  
14 however, must exist in fact. In this case, they  
15 simply don't, as we've shown. The company has  
16 been through a bad time as the result of the fact  
17 that they had the misfortune to know Mr. Wey and  
18 they've been swept up in this. They've had a lot  
19 of consequences for that.

20 Based on the facts, as we've outlined  
21 them for you, we're asking that the Panel  
22 determine that there are no public interest

1 concerns here to support a delisting  
2 determination, and we'd ask that the trading halt  
3 be terminated as soon as possible.

4 MR. KANG: I want to add a couple more  
5 things.

6 MS. HORTON: I need you to keep it  
7 brief.

8 MR. KANG: I will.

9 MS. HORTON: We will have time after the  
10 staff --

11 MR. KANG: No worries. Just --

12 MS. HORTON: -- but we've got to get to  
13 staff too.

14 MR. KANG: Absolutely. I also realize  
15 it's lunch time, so I'll keep this really short,  
16 just as a closing here. We've been public less  
17 than a year and in that less than a year period  
18 we've done two acquisitions, so I was able to go  
19 out there. We've raised more than \$15 million as  
20 well. We're executing on all fronts. We've  
21 gotten a ton of awards. We've also hired more  
22 than 50 employees. We expanded out to Dublin,

1 Ireland.

2 I feel like we've done nothing wrong.  
3 We've done everything right. When these matters  
4 came up we've also done all the right things.  
5 We've severed all ties. We passed board  
6 resolutions to do that and do the right things as  
7 well. Now we also have close to 1,000  
8 shareholders. Many stakeholders are concerned. I  
9 get calls from employees and families and  
10 customers, and these are all the right things that  
11 I want to do.

12 The other thing to keep in mind is that  
13 we are a real company with real customers, real  
14 employees, with real revenue. We're not a pharma  
15 trying to come up with some drug and we're trying  
16 to pass clinical trials. We're not a pre-revenue  
17 tech company trying to be profitable or we're not  
18 trying to come up with some idea. We're not a  
19 unicorn. I mean, these are things -- you know,  
20 unicorns, private companies that are worth a  
21 billion plus. We're a real company with real  
22 people doing good things.

1 I'd love to be able to continue that. I  
2 think we're just getting started. That's my plea  
3 to the review Panel is to --

4 MR. CAFFREY: Mr. Kang, not to cut you  
5 off, but I want you to speak a little bit more.  
6 Your lose exploded last year. You lost \$9  
7 million, it looks like, through September.

8 MR. KANG: I can speak it. I'll --

9 MR. CAFFREY: Can you talk to -- just  
10 from a going concern, going forward?

11 MR. KANG: Absolutely.

12 MR. CAFFREY: You're burning money at an  
13 enormous rate.

14 MR. KANG: I can speak at a high level,  
15 but Mark is here, my CFO, so.

16 MR. CAFFREY: Whatever.

17 MR. KANG: Absolutely. So I --

18 MR. CAFFREY: Fifty words or less.

19 MR. KANG: Fifty words or less, okay.

20 MR. SZYNKOWSKI: Do you just want --

21 MR. KANG: I'll give you a pretty high  
22 level. So we're making the right investments and

1 the right people, and beyond that I think maybe  
2 you can speak on the accounting side.

3 MR. SZYNKOWSKI: On the \$9 million loss  
4 we did take a \$4.4 million hit on the current  
5 valuation of the derivative because of the drop in  
6 the stock price between August and September halt  
7 which did cost us \$4.4 million, so the real loss  
8 is probably more and around the \$3.6, \$4 million  
9 range in real cash burn which is about \$400,000  
10 which we informed Discover that we were burning  
11 about \$400,000 a month. That's because we're  
12 making investments into the future. We're hiring  
13 new consultants. We're training new consultants,  
14 opening new offices. We've gone through the  
15 transformation from IT staffing to digital where  
16 we've seen an increase in the digital business,  
17 but we've had an offset in the drop in the IT  
18 staffing this year.

19 MR. CAFFREY: Just elaborate a little  
20 bit on the derivative hit for \$4 million.

21 MR. SZYNKOWSKI: So the derivative hit.  
22 Part of the Discover deal was \$10 in convertible

1 preferred stock. That stock converted with a  
2 dividend and a dividend conversion rate, so  
3 essentially they get -- it can slide anywhere from  
4 0 to 17 percent in dividends based on the stock  
5 price at the time. Since that's a variable rate  
6 that now becomes a derivative, so instead of being  
7 it a whole equity deal. Now, we can pay that  
8 derivative off in stock or cash.

9 MR. CAFFREY: Right.

10 MR. SZYNKOWSKI: So we can pay that in  
11 stock or cash but because it's a derivative it now  
12 becomes a liability, so we had to place, I think  
13 it was an \$8 million liability at the time of the  
14 deal. Then that is valued to current market at  
15 the end of every quarter, so between August to  
16 September the stock price dropped from about 5 and  
17 change to 290, so that derivative then went to \$12  
18 million and we took a \$4 million hit in the  
19 valuation of the derivative.

20 MR. CAFFREY: Okay. Thank you very  
21 much.

22 MS. HORTON: I'm going to suggest that

1 we take a five minute break at this point.  
2 Comfort break, for one thing, and also I know  
3 staff has got a lot of new information here. They  
4 may not fully be able to address it since it's the  
5 first time they're seeing it. If no one would  
6 object, if we can get everybody back here very  
7 quickly, but just a few minutes for some of us to  
8 take a breath and a glass of water and convene  
9 back. Everyone in agreement? Thank you.

10 (Recess)

11 MS. HORTON: Okay. We're back on the  
12 record. I think what we'll do at this point, I'm  
13 sure the panel's going to have questions, but  
14 perhaps we should go ahead and, unless you object,  
15 go ahead and let the staff make its presentation  
16 and then we'll follow up with questions. Does  
17 that work? Okay.

18 MR. ROWLAND: Thank you for allowing us  
19 to make our presentation here today. In the  
20 interest of time I'll try to keep these brief. On  
21 the surface, this case does seem very complex with  
22 many different subplots. You have the criminal



1 and civil charges against Ben Wey and some of his  
2 affiliates. You have concerns regarding Wey's  
3 relationship with the company. You have concerns  
4 regarding the company's predecessors, its  
5 shareholder list, and the trading of its stock.  
6 You have this loan between Ben Wey's wife, who was  
7 also charged in the SEC civil case, and the  
8 company's CEO. You have the company initiating an  
9 investigation into its relationship with Ben Wey,  
10 and you have the introduction of this voting  
11 agreement with the company's largest shareholder.

12 Now, if you try to focus on all of these  
13 factors you're going to get lost in all the  
14 minutia, so you're going to lose sight of what  
15 really is at the heart of this matter. When  
16 making a determination in this case you should  
17 look at the bigger picture and focus on the  
18 primary, over-arching issue. That issue is  
19 whether or not it is appropriate to delist the  
20 company based on the criminal and civil charges  
21 against Ben Wey and his affiliates given their  
22 extensive relationship with the company.

1                   The answer, quite simply, is yes.

2       First, these charges are not allegations being  
3       made by a third-party short seller or being  
4       reported in an article featured in the New York  
5       Daily News or some online blog posting. These  
6       charges are being levied by the U.S. Government  
7       and had to meet a much higher standard than just  
8       mere allegations. The Department of Justice had  
9       to present their charges to a grand jury and that  
10      grand jury determined that there was enough  
11      evidence to support issuing an indictment against  
12      Ben Wey and his affiliates.

13                   Also, the attorneys responsible for  
14      bringing these charges are subject to Rule 11  
15      which I'm sure you know means that they must have  
16      sufficient evidentiary support for the charges  
17      contained in the complaint. Otherwise, the court  
18      may imposed sanctions on the attorneys for filing  
19      a frivolous action. In other words, these charges  
20      have been thoroughly investigated and vetted by  
21      the agencies that filed them.

22                   Second, these charges related directly

1 to what we do as a stock exchange. Ben Wey and  
2 his affiliates are charge with conspiracy to  
3 commit securities fraud and wire fraud. In  
4 summary, Wey and his affiliates are alleged to  
5 have gained control of public shells through the  
6 use of nominee accounts. Then engineered reverse  
7 merge transactions between those shells and  
8 Chinese operating companies, and then brought  
9 those newly merged companies to NASDAQ for  
10 listing. This is especially concerning to us  
11 because this fraud involves companies that  
12 ultimately gained listing on our exchange.

13 In the criminal indictment, Wey is  
14 alleged to artificially inflated companies  
15 shareholder basis in order to deceive NASDAQ and  
16 gain listing for those companies on NASDAQ. To  
17 quote the indictment directly, "The ruse was, in  
18 each instance, successful. NASDAQ approved the  
19 listings of the subject issuers." As you can see,  
20 the charges against Wey strike at the heart of our  
21 rules and our listing process, and undermine our  
22 efforts to protect investors. Therefore, these

1 charges are relevant to the delisting  
2 determination.

3 It is also important to remember that  
4 the SEC has empowered us with the authority to  
5 delist in situations such as this case. As  
6 detailed in our hearing submission, listing rule  
7 101 grants us broad discretionary authority in  
8 order to maintain the quality of our market. This  
9 rule allows us to use our discretion to suspend or  
10 delist securities based on any event, condition,  
11 or circumstance that makes the continued listing  
12 on NASDAQ inadvisable or unwarranted.

13 The SEC has ruled previously that the  
14 discretion to be used is NASDAQ's, and that our  
15 rules do not limit themselves to mechanical and  
16 inflexible administration. The SEC's ruling  
17 stated that we should use pragmatic business  
18 judgments based on a kaleidoscopic variety of  
19 factors. That is exactly what we are doing in  
20 this case.

21 With regard to Wey's relationship with  
22 the company we have considered many factors. Wey,

1 through his firm, New York Global Group, is  
2 affiliated with an entity names NYGG Asia Limited  
3 which we have discussed here. NYGG Asia Limited  
4 is the company's largest shareholder, owning  
5 approximately 45 percent of the company's  
6 outstanding shares. Having that large of a  
7 positional loan is enough to attribute Wey's  
8 alleged misdeeds to this company, but in this  
9 case, there is much more evidence linking Wey to  
10 the company that cannot be ignored.

11 Ben Wey is part of the DNA of this  
12 company. Wey and his affiliates created the  
13 predecessor to this company, CleanTech, and  
14 provided funding to CleanTech's business  
15 operations. Wey and his affiliates also guided  
16 CleanTech through its delisting troubles and  
17 subsequent SEC decision, and also CleanTech's  
18 relisting process. When it appeared that  
19 CleanTech would not be able to regain listing on  
20 NASDAQ, Wey and his affiliates came up with the  
21 idea of merging CleanTech with 6 Dimensions.

22 In order to make the merger happen, Wey

1 and his affiliates stepped in to relieve the debt  
2 that CleanTech owed to him and others all in  
3 exchange for 45 percent position in the company.  
4 In addition, although the company has represented  
5 that Wey was simply an unpaid consultant who  
6 provided advise from time to time, email traffic  
7 between Wey and the company suggests otherwise.

8 He is copied on dozens, if not hundreds,  
9 of emails over a seven to eight month period  
10 regarding all types of day to day affairs,  
11 including the negotiation of fees paid to  
12 attorneys, the company's policy on removing  
13 restrictive legends. He introduces them to  
14 potential business partners and financiers. He  
15 gets a preview of the new logo design, and is even  
16 notified when third parties attempt to exercise  
17 their warrants.

18 The body of emails does not paint the  
19 picture of a person who provides advice only from  
20 time to time, as the company has described. Wey  
21 also travelled with the company's CEO on a trip in  
22 August to visit the Discover Growth Fund, an

1 investor in the company. The company told us that  
2 the purpose of the trip was to access whether  
3 Discovery would make additional investments into  
4 the company, and that Wey was asked to attend  
5 given his capital markets' experience.

6 Again, Wey's presence on a business trip  
7 with the company's CEO appears to suggest a closer  
8 relationship than what the company has previously  
9 described. The relationship also extend to Ben  
10 Wey's family and affiliates. As we have noted in  
11 our previous submissions, Ben Wey's wife loaned  
12 the company's CEO \$100,000 which was purportedly  
13 used to purchase additional shares of the company  
14 stock.

15 The CEO also sent Wey and his wife a  
16 copy of a book he was writing for their comments.  
17 As we've mentioned today, we are not suggesting  
18 that there is anything nefarious about showing the  
19 book to Wey and his wife. We are just  
20 establishing that the relationship exists. That  
21 wasn't proof of any wrongdoing. It was just proof  
22 that they have a closer relationship than we might

1 have known previously.

2 Bill Uchimoto, an attorney who is named  
3 as a defendant in the SEC's case, and who also has  
4 a longstanding relationship with Ben Wey has been  
5 present too. Uchimoto was involved with the  
6 original CleanTech application to NASDAQ in 2010.  
7 He was involved throughout CleanTech's delisting  
8 process, and was involved throughout the merger  
9 between CleanTech and 6 Dimensions. Uchimoto and  
10 his firm also represented the company throughout  
11 the application process with NASDAQ.

12 Lastly, two stock brokers who are barred  
13 by FINRA from associating with any FINRA member  
14 firms appear on the company's stockholder lists.  
15 These two stock brokers are also linked to Wey,  
16 having received money from him to start their own  
17 brokerage firm.

18 As you can see, Ben Wey's relationship  
19 with the company is deep and pervasive. He is  
20 involved in many aspects of the company despite  
21 never having been an officer, director, or  
22 employee of the company. That is what concerns



1 us. At the heart of the criminal and civil  
2 charges is the fact that Ben Wey and his  
3 affiliates were able to influence and excerpt  
4 control over companies from behind the scenes  
5 without the public being aware of their presence.

6 Now, before I conclude my colleague  
7 Arnold Golub has a few words regarding the  
8 recently signed voting agreement.

9 MR. GOLUB: Thanks, Alan. I'd also like  
10 to echo my thanks to the Panel for your time and  
11 consideration today. Our comments on the voting  
12 trust will be necessarily limited since even  
13 though the company signed the agreement a week ago  
14 the first we saw of it was last night when they  
15 filed their AK. Nonetheless, we do not believe  
16 that this voting agreement addresses the concerns  
17 raised by NYGG and NYGG Asia.

18 First, the crux of the government's  
19 charges against Wey and NYGG is that they went to  
20 great lengths to conceal their influence and  
21 involvement with companies. As such, we simply  
22 can't take at face value the agreement and take

1 any comfort from the distance that it attempts to  
2 display. We also can't take any comfort from the  
3 representation submitted today that NYGG is  
4 unaffiliated with Wey. In fact, NYGG Asia's  
5 ownership in the company arose through its  
6 relationship -- the predecessor company,  
7 CleanTech's, relationship with NYGG.

8 Second, the influence that we have  
9 documented in the record is all informal  
10 influence. In fact, the company has maintained  
11 all along that Wey has no formal role. And so  
12 again, while this voting trust may be an optic  
13 measure to make it appear the company is taking  
14 action it does not address these underlying  
15 informal influences.

16 Third, the effect of the voting trust is  
17 that Mr. Kang will control the outcome of any  
18 vote presented to shareholders by virtue of his  
19 approximately 45 percent ownership in the company.  
20 Given the ties demonstrated throughout the record,  
21 the --

22 MS. DECKER: Did you just say Mr. Kang

1 controlled 45 percent?

2 MR. GOLUB: That's correct. NYGG Asia  
3 has approximately 45 percent --

4 MS. DECKER: Do you mean Mr. Wey or Mr.  
5 Kang?

6 MR. GOLUB: Mr. Kang.

7 MS. DECKER: Okay. I'm sorry --

8 MR. GOLUB: So in --

9 MS. DECKER: -- I misunder-, --

10 MR. GOLUB: So there's two approximate  
11 45 percent stakes.

12 MS. DECKER: Oh. Oh, I misunderstood  
13 that. Okay.

14 MR. GOLUB: NYGG Asia has approximately  
15 a 45 percent stake.

16 MS. DECKER: I thought you were talking  
17 about the same 45 percent.

18 MR. GOLUB: No, there's --

19 MS. DECKER: I didn't realize two --

20 MR. GOLUB: -- there's --

21 MS. DECKER: Okay. Good, it wasn't just  
22 me. Thank you.

1                   MR. GOLUB: I apologize for the  
2                   confusion. There's two 45 percent stakes.

3                   MS. DECKER: Okay.

4                   MR. GOLUB: One held by NYGG Asia. The  
5                   other held by Mr. Kang directly through trusts  
6                   that he's established. Given that ownership  
7                   control my Mr. Kang that the ties demonstrated in  
8                   the record between Mr. Kang and Mr. Wey the voting  
9                   trust doesn't alleviate our underlying concerns  
10                  about ongoing influence.

11                  Finally, we're concerned that the  
12                  agreement would still leave investors who  
13                  purchased a security while it's listed on NASDAQ  
14                  at risk because the agreement only survives as  
15                  long as the company is listed on NASDAQ. So if  
16                  the company is delisted for regulatory reasons,  
17                  for not meeting any listing standard or the  
18                  company voluntarily delists the voting agreement  
19                  determinates and any shareholder who purchased  
20                  shares while the company was listed on NASDAQ  
21                  would, again, face the promotor risk associated  
22                  with NYGG's significant stake in the company.

1           I also want to briefly respond to a few  
2 of the claims made by the company today. The  
3 company spent a lot of time raising and refuting  
4 what we view as ancillary issues. They're not  
5 core to staff's delisting determination, but I  
6 would still like to respond for the record.

7           First with regard to the, what I'd call  
8 a hyper- sensitive reading of the company  
9 description, I'm surprised and confused by their  
10 concerns there given that we used the company's  
11 own description from its public filings as to what  
12 they do and how they do it. We cite the company  
13 as the source of that.

14           With regard to the discussion about the  
15 SEC's decision in CleanTech, I note also that  
16 staff only cited that decision as background of  
17 the company's formation. Yet, again, the company  
18 spent a lot of time on that today. Nonetheless,  
19 we maintain that the decision of the SEC and  
20 CleanTech was on procedural grounds. They didn't  
21 reach the substantive issue of that company, of  
22 CleanTech, of the predecessor to 6D's, involvement

1 with Benjamin Wey which was the basis for staff's  
2 delisting. Rather, the SEC ruled on evidentiary  
3 grounds.

4 In that vein, there's kind of two things  
5 I'd like to highlight. The first is that the  
6 decision for the first time established that the  
7 SEC was looking for sworn testimony in a delisting  
8 proceeding. That was something they had never  
9 before looked for. In that matter, there was an  
10 affidavit from CleanTech's counsel as to what  
11 staff had asked for in connection with CleanTech's  
12 relationship with Ben Wey. There was no sworn  
13 testimony from staff, but rather statements from  
14 staff as to what they had looked for. That we,  
15 again, view as an evidentiary question that the  
16 SEC ruled upon. It was what we viewed as new  
17 precedent from the SEC, and I'd be happy to the  
18 extent the Panel is interested in the questions  
19 around CleanTech provide subsequent SEC decisions  
20 characterizing their CleanTech decision in that  
21 matter as relating to evidentiary grounds and  
22 what's necessary in the record.

1           The other interesting footnote to the  
2 CleanTech decision is that the sworn affidavit  
3 that the SEC relied on in that matter was, in  
4 fact, from Bill Uchimoto who was the lawyer that  
5 was included in the SEC's enforcement matter  
6 against Benjamin Wey.

7           Lastly, with regard to the Discover  
8 lawsuit, I would ask the Panel to review the -- to  
9 the extent that the Panel believes it's important  
10 to review the judge's decision and staff's  
11 Footnote 23 in our hearing's memo. Again, we  
12 believe it's clear from the record and we maintain  
13 that, you know, while we included the affidavit as  
14 a fact that we considered, that affidavit was not  
15 discredited by the judge. It was considered by  
16 him against an evidentiary standard and  
17 interpreting contractual claims is what the judge  
18 ultimately had to do, not to decide whether the  
19 statement in that affidavit was true or false.  
20 But rather, whether by the terms set out by the  
21 parties in their contract whether Discover had  
22 established a likelihood of success, and the judge

1 determined -- and, again, reading from the  
2 decision as quoted in our hearing memo, "That at  
3 this early stage and without the benefit of  
4 discovery, Discovery has not proven a likelihood  
5 of success on the merits." Again, it wasn't an  
6 ultimate decision. It was on this motion for  
7 attachment only.

8 With that, I'll turn it back to Alan to  
9 conclude, and we'd be happy to entertain any  
10 questions.

11 MR. ROWLAND: So getting back to what  
12 our initial question was, is it appropriate to  
13 delist the company based on the criminal and civil  
14 charges against Ben Wey and his affiliates given  
15 their extensive relationship with the company? As  
16 we have demonstrated here today, as well as in our  
17 written submissions, the answer to that question  
18 is yes. As such, we believe the appropriate  
19 determination is to delist the company's  
20 securities from NASDAQ. With that, back to you.

21 MR. CAFFREY: Mr. Kang, you have a 45  
22 percent ownership and control of the shares that



1 we're talking about here today?

2 MR. KANG: No, that's not correct. I  
3 have roughly million shares controlled through  
4 three LLCs. The rest of the shares, as part of  
5 the merger agreement, which also was disclosed  
6 during our initial application with NASDAQ in  
7 2014.

8 MR. CAFFREY: So the 23 million shares  
9 would represent what percentage of the  
10 outstanding?

11 MR. DONOHOE: Roughly 30 percent.

12 MR. KANG: Yeah, about -- it's 29.7  
13 percent.

14 MR. CAFFREY: And how many do you  
15 personally own?

16 MR. KANG: About 45,000, but I don't  
17 want to go on the record of that.

18 MR. CAFFREY: Okay.

19 MR. KANG: I think it's about 45,000.

20 MR. CAFFREY: Roughly.

21 MR. DONOHOE: Just clarify, the 29.7  
22 percent that's what you control through the three

1 LLCs.

2 MR. KANG: That's correct.

3 MR. CAFFREY: Yeah.

4 MR. DONOHOE: Then in addition to that  
5 there are other family trusts that Mr. Kang just  
6 claims beneficial ownership of and voting power  
7 in.

8 MR. KANG: I've fully disclaimed  
9 ownership --

10 MR. CAFFREY: So what are the LLCs?

11 MR. KANG: The three LLCs is for asset  
12 protection, so during this process --

13 MR. CAFFREY: But who are the principles  
14 in the LLCs?

15 MR. KANG: I am. I'm a manager. So  
16 this is for asset protection.

17 MR. CAFFREY: But you're a manger, but  
18 you're also an owner? The LLCs?

19 MR. KANG: Yes.

20 MR. CAFFREY: All right.

21 MS. HORTON: The family trust, I'm  
22 sorry, just to follow up on that.

1           MR. KANG: So the family trust, I think  
2 a narrative might be helpful through this process.  
3 So what I learned was that -- I've never taken a <  
4 company public before, so what I learned from an  
5 estate planning lawyer is that you should set up  
6 appropriate --

7           MR. CAFFREY: Yeah, okay.

8           MR. KANG: -- entity protection.

9           MR. CAFFREY: Sure.

10          MR. KANG: And things of that nature.

11          MR. CAFFREY: Sure.

12          MR. KANG: So one of the things that  
13 came about was, well, have you thought about what  
14 you were to do if you die or where do you want it  
15 to go? You know, do you want it to go to a  
16 charitable trust or do you want it to go to a  
17 charity or do you want it to go family or future  
18 kids and this kind of stuff. So during the  
19 process I learned that if I have no pecuniary  
20 interest which basically means I just claim  
21 complete ownership. I'm not a trustee. I'm not a  
22 beneficiary. I have no control over those at all.

1 That's what happens in the process.

2 MS. HORTON: So those bring you up to  
3 the 45 percent?

4 MR. DONOHOE: Yes.

5 MR. KANG: Well --

6 MS. HORTON: The three LLCs plus the  
7 family trust --

8 MR. DONOHOE: If you were to add them.

9 MR. FINI: Well, if you were to add  
10 those --

11 MS. HORTON: Over shoot.

12 MR. FINI: -- you'd get to 45 percent.

13 MS. HORTON: Yes.

14 MR. DONOHOE: Yes.

15 MR. FINI: But he doesn't have it.

16 MS. HORTON: Right. That's what I'm  
17 trying to --

18 MR. FINI: Yeah.

19 MR. DONOHOE: Right.

20 MR. KANG: Right. That's what I'm maybe  
21 getting clarification from the staff. I --

22 MR. CAFFREY: Correct.

1 MR. KANG: -- but that's not my control  
2 because I think that was what was said. I have no  
3 control over those.

4 MR. CAFFREY: When did you borrow the  
5 \$100,000 to allegedly buy shares of stock and what  
6 was the price of the stock?

7 MR. KANG: I don't recall off the top of  
8 my head, but I did borrow the money around August  
9 timeframe, I believe. I'll have to check my  
10 records.

11 MR. DONOHOE: I think it was August 20  
12 and the note is in the exhibits.

13 MR. KANG: Yeah.

14 MR. CAFFREY: And where is the stock  
15 selling in, approximately?

16 MR. KANG: I think it was ranging  
17 between \$2 to \$4, somewhere in that range which I  
18 felt was very cheap. So here's how that --

19 MR. CAFFREY: So make it \$3 a share --

20 MR. KANG: Just.

21 MR. CAFFREY: -- just for fun, so you  
22 bought 30,000 shares of stock?

1                   MR. KANG: I believe it was around  
2                   45,000. The way I bought it, also, I didn't put  
3                   in a order for a price. I just said do a VWAP,  
4                   and said whatever the average price is for the  
5                   day. I want to buy it. I did.

6                   MR. CAFFREY: You didn't know that much,  
7                   but you knew what a VWAP was?

8                   MR. KANG: I found that out from my new  
9                   wealth manager at UBS.

10                  MR. CAFFREY: Pretty interesting.

11                  MR. KANG: That's what he told me. So I  
12                  think from a --

13                  MR. CAFFREY: I guess what has me a  
14                  little puzzled is you've got a significant amount  
15                  of control over a lot of shares.

16                  MR. KANG: Yes.

17                  MR. CAFFREY: You don't want to claim  
18                  ownership, great. Is it worth buying another  
19                  45,000 shares with all you've already had?

20                  MR. KANG: Here's why I did it. I saw a  
21                  press release that the GoPro CEO purchases his own  
22                  stock. I also saw that Dick from Twitter did that

1 as well.

2 MR. CAFFREY: Mm-hmm.

3 MR. KANG: So I felt it was a sign of  
4 confidence --

5 MR. CAFFREY: Okay.

6 MR. KANG: -- in my own company. So I  
7 was like, well, if I can do this and show people,  
8 including my own employees, because I was telling  
9 my employees, look, the company's going to do  
10 well. We're poised to grow. Our competitors are  
11 at our heels. They're trying to steal our  
12 employees, and so what better way -- and, you  
13 know, of course my wealth manager's trying to say  
14 owner's should buy some stock. I'm like, I don't  
15 know other companies I want to buy stock of, but  
16 I'm confident of my own. He said, well, buy some  
17 stock.

18 So I said, okay. Can I put that money  
19 together? At the time I know the optics looking  
20 at Michaela Wey. I asked people and she had good  
21 terms and I said, okay, but this was before the  
22 arrest and after the arrest I was like, oh my god.

1 So I need to pay this off and that's what I did.

2 MR. CAFFREY: Sure. Okay. Thank you  
3 very much.

4 MR. ROWLAND: If I could just on the  
5 question of the ownership, the voting agreement  
6 introduce today from the company allows NYGG Asia  
7 to sell in proportion to --

8 MR. KANG: Right.

9 MR. ROWLAND: -- sales by Mr. Kang and  
10 that does aggregate the shares held by him through  
11 the LLCs with the shares in the family trust.  
12 Looking at what NYGG Asia can sell.

13 MR. KANG: That is accurate. I don't  
14 have ownership or control or anything like that,  
15 but that's what the trust does say.

16 MR. DONOHOE: With respect to that  
17 provision, the original draft didn't have it in  
18 there. We suggested that those not be aggregated  
19 because he doesn't own them and he doesn't vote  
20 them, and NYGG Asia required that we aggregate  
21 them together. They wouldn't sign them if we  
22 didn't, so that's how that got in there.



1                   So I'd like to --

2                   MR. FINI: I just have one minor thing  
3 to point out. I'm sorry. One of the things that  
4 staff said is that the finding by the judge was  
5 only a breach of contract finding. That's simply  
6 incorrect. Page 26 of the judge's decision, you  
7 can read it yourself, "As to the securities fraud  
8 claims," the judge said, "as described above,  
9 Discovery has failed to show any likelihood or  
10 proving that at the closing 6D acknowledge of the  
11 grand jury or SEC investigation nor has Discovery  
12 shown a likelihood of proving Wey dominated  
13 control to manipulated 6D." That was as to the  
14 fraud claims.

15                   This is not an esoteric contract  
16 interpretation finding. The judge simply looked  
17 at this allegation of supposed control and  
18 rejected it on the merits, because you have to  
19 show a likelihood of success on the merits.  
20 Frankly, the staff didn't look objectively at the  
21 opinion. It grabs to try to create the mosaic it  
22 wanted to create as opposed to the true picture

1 that exists which is that allegation is not  
2 substantiated.

3 MR. DONOHOE: Let me go ahead and close.  
4 So to the extent that the Panel --

5 MS. HORTON: I have a question.

6 MR. DONOHOE: Sure.

7 MS. HORTON: I just want to make sure  
8 that I understand what's been represented here  
9 about the relationships between NYGG New York and  
10 Asia and the company. You mentioned a cobranding  
11 arrangement between --

12 MR. DONOHOE: Yeah.

13 MS. HORTON: -- the New York and Asia  
14 NYGGs. Can you?

15 MR. DONOHOE: Yeah. I would suggest  
16 that we look at Roger Lee's affidavit which is in  
17 the list of exhibits because all of the  
18 information that we have with respect to that  
19 relationship comes from that affidavit which is  
20 Exhibit 4.

21 He doesn't define what cobranding is,  
22 but what he does say is that, "NYGG Asia and NYG

1 Capital do not have, and have never had, common  
2 owners. In other words, Mr. Wey is not, and has  
3 never been, an owner of NYGG Asia. Mr. Wey is  
4 also not, and has never been, an officer,  
5 director, or employee of NYGG Asia, and he is not  
6 involved in, and has never overseen, the  
7 operations at NYGG Asia." So I don't want to read  
8 the whole thing. It's only three pages long.

9 MS. HORTON: Okay.

10 MR. DONOHOE: But I would ask you to  
11 take a look at that.

12 MS. HORTON: But he was a consultant  
13 working for NYGG Asia --

14 MR. DONOHOE: Right.

15 MS. HORTON: -- or at least that was  
16 your understanding?

17 MR. FINI: Yes.

18 MR. DONOHOE: Yes. That's right.

19 MS. HORTON: Okay.

20 MR. DONOHOE: So to go ahead and to  
21 close out. We're not denying that Tejune Kang  
22 knew Mr. Wey or sought advice from Mr. Wey. He

1 did. Did Mr. Wey have control of the company?  
2 No. Did he exert undue influence over the  
3 company? No. In all of the emails that the staff  
4 refers to there are no allegations coming out of  
5 those emails that say Mr. Wey was telling the  
6 company to steal from another company or defraud  
7 shareholders or do anything improper.

8 A good example of the type of advice  
9 that Mr. Kang got from Mr. Wey is when they were  
10 negotiating the investment with the Discover Fund.  
11 Mr. Wey had nothing to do with procuring that  
12 investment, and he was not consulted on the  
13 investment until the 11th hour when they were  
14 finalizing the agreement. Mr. Kang showed in the  
15 agreement and said, what do you think? He got two  
16 comments from Mr. Wey. The first one was, I  
17 think you can get a higher conversion price. Why  
18 don't you counter with a higher price? They  
19 countered with a higher price. They met in the  
20 middle. They ended up getting a higher price.

21 The other thing Mr. Wey told him is  
22 there's not a no shorting provision in here. You

1 need to have a no shorting provision. So they  
2 went back and they put a no shorting provision in.  
3 That's the type of advice he was getting from him.

4 He was getting introduced to all the,  
5 you know, gold bracket investment banks by Mr.  
6 Wey, to David Bonderman by Mr. Wey. He had no  
7 reason to believe that there was a problem with  
8 Mr. Wey. With respect to Mr. Uchimoto, what did  
9 he know about Mr. Uchimoto? He knew he was a  
10 lawyer. He knew he used to be the general counsel  
11 for the Philadelphia Stock Exchange. He had no  
12 reason to believe that there was a problem with  
13 Mr. Uchimoto.

14 If Ben Wey controlled this company he  
15 would have raised hell when they took the company  
16 over and they started getting rid of all their  
17 advisors. They got rid of Holland and Knight.  
18 They got rid of all the old auditors. They  
19 transformed it over to 6D's company. Ben Wey  
20 didn't control the company. He never would have  
21 allowed that if he did.

22 My guess is that -- you know, look at

1 Bernie Madoff. I bet you there are a lot of folks  
2 on Wall Street that asked Bernie Madoff for  
3 advice. He was well-known, everybody knew him.  
4 Everybody thought he was the smartest guy on the  
5 block. You know what? When Bernie Madoff got  
6 indicted I bet you they all stopped asking him.  
7 But those companies didn't get swept up in  
8 something like this because they happen to know  
9 Bernie Madoff and they happened to get advice from  
10 him. To the extent that the Panel thinks that we  
11 need to amend the voting agreement we're open to  
12 doing that, and I'm sure we can go back to NYGG  
13 Asia and get them to do it.

14 So let's just summarize what we've  
15 talked about today. The staff has not provided  
16 any evidence to indicate that the company didn't  
17 have the 300 shareholders, the 300 round lots at  
18 the time that it listed. Certainly today, we know  
19 that there are over 600. Benjamin Wey did not and  
20 does not control the company. He has not  
21 improperly influenced the company. We've got the  
22 affidavits from all the current and former board

1 members.

2           If you're going to influence a company  
3 you need to be able to influence the board or  
4 you're never going to get anything done, and he  
5 didn't do it, and he's not doing it today. While  
6 he may have had limited influence in the past,  
7 he's got none today. No one's talking to him. No  
8 one's going to talk to him.

9           The company has adopted a board  
10 resolution. They did it immediately. They've  
11 executed the shareholder agreement. They've paid  
12 off the Michaela Wey note. So they've done  
13 everything that's within their power to go ahead  
14 and make it clear to the world, hey, we recognize  
15 that this guy may be a bad guy and we're not going  
16 to have anything to do with it.

17           There's no indication of market  
18 manipulation. I mean, obviously, the staff  
19 focused on that as maybe an ancillary point.  
20 That's a huge point. If the company's involved in  
21 market manipulation the company should be  
22 delisted. The example that the staff gave was

1 clearly disproved.

2           Again, we acknowledge that NASDAQ has  
3 broad discretion. Of course they have broad  
4 discretion, but in order to apply that discretion  
5 the specific grounds have to exist in fact. That  
6 was what happened in the CleanTech case. The SEC  
7 said the specific grounds don't exist in fact, so  
8 therefore we reverse the delisting determining.  
9 And now here we find ourselves back in the same  
10 situation again. So we think it's abundantly  
11 clear that public interest concerns are just not  
12 present here to support a delisting determination  
13 and we ask that the Panel rule that way and allow  
14 the company to being trading again.

15           MR. KANG: The thing that Dave left out  
16 here is that it is a real company. We have  
17 employees. We have customers. These are things  
18 that I'm really focused on is helping U.S.  
19 American companies get global presence, and that's  
20 what I do. I just want the opportunity to  
21 continue to grow the company.

22           I feel that in less than one year of



1 being public on NASDAQ as a technology/digital  
2 marketing company we've made a lot of great  
3 milestones and we're just getting started. I  
4 would love to be able to continue doing that. We  
5 have acquisition targets in our pipeline right  
6 now. We have people on standby that want to join.  
7 I mean, there's just so much great stuff, and it's  
8 challenging for me because I care so much, and  
9 that's what I wanted to say. So thank you.

10 MS. DECKER: I have one question.

11 MS. HORTON: We do have another question  
12 from the Panel.

13 MS. DECKER: Given Uchimoto's situation  
14 with the other listings, as part of the  
15 investigation the audit committee's doing was  
16 there any thought to -- with the NASDAQ's  
17 concerns, going back and looking at the original  
18 listing? Shareholders for nominee? Shareholders  
19 to look and see if -- I understand what was done  
20 with respect to the foreign --

21 MR. KANG: That's a great question.

22 MR. DONOHOE: Why don't we ask Blank

1 Rome to answer that? Blank Rome, you're doing the  
2 investigation. Did you hear the question?

3 MR. GITLITZ: Yes. This is Michelle.  
4 Yes, we heard the question. Our investigation is  
5 ongoing and we're looking into the issues that  
6 were raised. I can't get into specifics right now  
7 because we're still in the process of reviewing,  
8 but I understand the issue you've raised and we're  
9 looking into all of those issues.

10 MS. DECKER: Okay.

11 MS. HORTON: Okay. Well, I think that  
12 we have what we need. You know how this works  
13 from here on out. You should be hearing from the  
14 Panel, you know, it may be a couple of weeks. You  
15 will hear in written form. Status quo pertains  
16 until that point. If anything changes, you have  
17 different, changed information you certainly are  
18 under an obligation to let us know of that.

19 If there are ongoing conversations with  
20 staff regarding, for example, the voting trust or  
21 anything of that nature could you please keep us  
22 in the loop? With that we'll conclude the

1 hearing. Thank you very much.

2 (Whereupon, at 1:21 p.m., the

3 HEARING was adjourned.)

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CERTIFICATE OF NOTARY PUBLIC

DISTRICT OF COLUMBIA

I, Carleton J. Anderson, III, notary public in and for the District of Columbia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

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Notary Public, in and for the District of Columbia

My Commission Expires: March 31, 2017