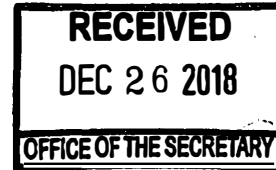


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

ADMINISTRATIVE PROCEEDING  
File No. 3-16339

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In the Matter of :  
: :  
JOHN BRINER, ESQ., et al. :  
: :  
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**DIVISION OF ENFORCEMENT’S MOTION TO DISMISS**

Pursuant to SEC Rules of Practice 154 and 401, the SEC Division of Enforcement (“the Division”) respectfully requests that the Securities and Exchange Commission (“Commission”) (1) dismiss this administrative proceeding as to *pro se* Respondent Diane Dalmy (“Dalmy”), the last remaining Respondent in this proceeding; and (2) stay this proceeding pending the Commission’s consideration of this motion.

**PRELIMINARY STATEMENT**

The Order Instituting Proceedings (“OIP”) in this case charges Dalmy – a 63-year-old former securities attorney – with fraudulently providing a series of false legal opinion letters in support of stock registration statements filed with the Commission for eighteen companies, in violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”). On May 27, 2015, ALJ Grimes held a hearing as to Dalmy and, on September 8, 2015, issued his Initial Decision – which finds that Dalmy violated Section 17(a), orders her to cease and desist from such violations, and imposes a \$680,000 civil money penalty. After the Supreme Court’s June 21, 2018 decision in *Lucia v. SEC*, 138 S.Ct. 2044 (2018), the Commission reassigned this case to ALJ Elliot for a new hearing. However, since Judge Grimes’ September 2015 Initial Decision in

this case, Dalmy has been sanctioned in several other unrelated Commission and U.S. Department of Justice actions against her. Consequently, Dalmy currently is serving a five-year prison sentence, she has been ordered to pay \$2 million in restitution, and she has been barred from practicing as an attorney before the Commission. The Division respectfully submits that, in light of those significant sanctions in other proceedings, any added public benefit to be derived from the Division's re-litigating this administrative proceeding against Dalmy is marginal at best – and is outweighed by the Commission's interest in conserving Division, Commission, and Court resources. For these reasons, the Division respectfully moves the Commission to dismiss this proceeding as to Dalmy.

## **BACKGROUND**

### **I. Procedural History of this Proceeding**

On January 15, 2015, the Commission issued its OIP in this case against a number of respondents, including Diane Dalmy, who is now the sole remaining respondent. The OIP alleges that, in 2011 and 2012, Dalmy knowingly or recklessly provided a series of false attorney opinion letters in support of stock registration statements filed with the Commission for eighteen companies, in violation of Securities Act Section 17(a). The OIP seeks a determination regarding whether Dalmy should be ordered to cease and desist from any such future violations, and pay disgorgement and civil money penalties.

On May 27, 2015, ALJ Grimes held a hearing in this matter and, on September 18, 2015, issued his initial decision. The initial decision found that Dalmy violated Sections 17(a)(1) & (3), and further ordered her to cease and desist from such future violations, and to pay a \$680,000 civil money penalty. On October 13, 2015, Dalmy appealed the initial decision to the Commission. The Commission, however, ultimately did not hear Dalmy's appeal, due to separate

Commission litigation that culminated in the Supreme Court decision *Lucia v. SEC*, 138 S.Ct. 2044 (2018). On August 22, 2018, in light of *Lucia*, the Commission ordered in this case “a new hearing before an ALJ who did not previously participate in the matter.” *See In re Pending Administrative Proceedings*, Release No. 10536 (August 22, 2018). On September 12, 2018, this case was reassigned to ALJ Elliot.

## **II. Other Federal Government Proceedings Against Dalmy**

On September 30, 2015, in an unrelated Commission action against Dalmy and others, *SEC v. Zenergy Int'l, Inc.*, 141 F. Supp.3d 846 (N.D. Ill. 2015), the District Court held Dalmy liable for violating Securities Act Section 5. *Id.* On December 22, 2015, based on that holding, the Commission instituted a Rule 102(e) administrative proceeding against Dalmy. On July 29, 2016, Chief ALJ Murray issued an initial decision in that proceeding granting the Commission summary disposition and ordering Dalmy “permanently disqualified from appearing or practicing before the . . . Commission as an attorney.” *In re Diane D. Dalmy, Esq.*, AP File No. 3-17020, 2016 WL 4088747, \*10 (Initial Decision, July 29, 2016). On September 29, 2016, the Commission issued a finality order in that proceeding. *In re Diane D. Dalmy, Esq.*, AP File No. 3-17020 (Commission Order, Sept. 29, 2016).

On February 6, 2018, in an unrelated criminal case, *United States v. Dalmy*, 18-cr-21 (JAM) (D. Conn.), Dalmy pleaded guilty to one count of conspiracy to commit wire fraud. On May 15, 2018, the District Court initially sentenced Dalmy to thirty-six months imprisonment and ordered her to pay \$2 million in restitution. *Id.* (DE 21.) On July 27, 2018, the United States moved to resentence Dalmy to 60 months imprisonment “based on her willful failure to pay restitution,” alleging that Dalmy “lied to the Court about her financial assets and, after sentencing, secreted away about \$47,000 in cash to avoid having to pay that money toward her

restitution obligation.” *Id.* (DE 33.) On December 11, 2018, the Court issued an Amended Judgment, increasing Dalmy’s prison sentence to 60 months. *Id.* (DE 54.)

### **DISCUSSION**

For the following reasons, the Division respectfully requests that the Commission (1) dismiss this administrative proceeding as to Dalmy; and (2) stay this proceeding pending its consideration of this motion. Due to Dalmy’s age (63), her 5-year prison sentence, her \$2 million criminal restitution order, and the Commission 102(e) bar against her – all imposed subsequent to ALJ Grimes’ September 2015 Initial Decision in this proceeding – the Division respectfully submits that any public benefit to be gained by re-litigating this case is marginal, and is outweighed by the Commission’s interest in conserving Division, Commission, and Court resources. Dalmy apparently will not leave prison until age 68, and she already has been barred from practicing before the Commission. Furthermore, Dalmy’s \$2 million restitution Order well exceeds the amount of monetary relief that the Division previously obtained against her (in the September 2015 Initial Decision in this case – \$680,000) and, thus, exceeds the amount that the Division is likely to obtain through re-litigating this case.

### **CONCLUSION**

For the foregoing reasons, the Division respectfully requests that the Commission (1) dismiss this administrative proceeding as to Dalmy; and (2) stay this proceeding pending its consideration of this motion.

Respectfully submitted,

Dated: December 21, 2018

A handwritten signature in black ink, appearing to read "Jack Kaufman", is written over a solid horizontal line.

Jack Kaufman

Jorge Tenreiro

Attorneys for the Division of Enforcement

Securities and Exchange Commission

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**CERTIFICATE OF SERVICE**

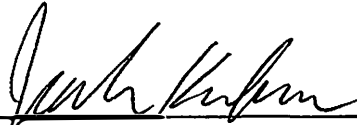
I, Jack Kaufman, certify that on this 21st day of December, 2018, I caused true and correct copies of the Division of Enforcement's Motion to Dismiss to be served by United Parcel Service on:

Diane Dalmy, Register No. [REDACTED]

[REDACTED]

[REDACTED]

Central Falls, RI [REDACTED]

  
\_\_\_\_\_  
Jack Kaufman



DIVISION OF  
ENFORCEMENT

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

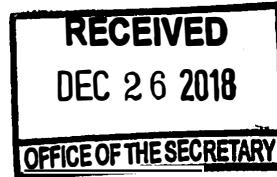
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JACK KAUFMAN  
SENIOR TRIAL COUNSEL  
212-336-0106  
KAUFMANJA@sec.gov

December 21, 2018

**BY UPS OVERNIGHT**

The Honorable Cameron Elliot  
Administrative Law Judge  
U.S. Securities and Exchange Commission  
100 F Street, NE, Mail Stop 1090  
Washington, DC 20549



**Re: In the Matter of John Briner, Esq., et al., Admin. Proc. File No. 3-16339**

Dear Judge Elliot:

On December 10, 2018, the Court ordered the SEC Division of Enforcement (“Division”) and *pro se* Respondent Diane Dalmy (“Dalmy”) to submit by December 24, 2018 a “proposal for the conduct of further proceedings.” The Division hereby notifies the Court of its enclosed motion to the Commission to: (1) dismiss this proceeding as to Dalmy; and (2) stay this proceeding pending resolution of the Division’s motion to dismiss. In light of the enclosed motion, the Division respectfully seeks an indefinite extension of time to submit a proposal for further proceedings (if necessary), until after the Commission has ruled on the Division’s motion to dismiss.

Respectfully submitted,

Jack Kaufman  
Senior Trial Counsel  
Division of Enforcement

cc: Diane Dalmy, Esq., *pro se* Respondent (by UPS)  
Office of the Secretary (by UPS)