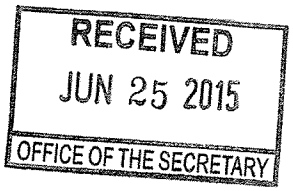
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16339

In the Matter of	
JOHN BRINER, ESQ., et al.	

DIVISION OF ENFORCEMENT POST-HEARING BRIEF
AGAINST RESPONDENT DIANE DALMY

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The SEC Division of Enforcement ("Division") respectfully submits this post-hearing brief regarding the May 27, 2015 trial of its claims against respondent Diane Dalmy.

PRELIMINARY STATEMENT

This case concerns attorney Dalmy's issuance of 18 false legal opinion letters for 18 Form S-1 registration statements ("Forms S-1") – filed with the Commission for 18 companies (the "Issuers") – in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"). Dalmy's opinion letters each state that the respective Issuer's shares were "validly issued, fully paid and non-assessable." In support of this opinion, Dalmy's letters each falsely state:

> In connection with this opinion, I have made such investigation and examined such records, including: (i) the Registration Statement; (ii) the Company's Articles of Incorporation, as amended; (iii) the Company's Bylaws; (iv) certain records of the Company's corporate proceedings, including such corporate minutes as I deemed necessary to the performance of my services and to give this opinion; and (v) such other instruments, documents and records as I have deemed relevant and necessary to examine for the purpose of this opinion.

In fact, as Dalmy admitted at trial, she did not perform the above-claimed "investigations." Dalmy further admitted that she created all 18 opinion letters and sent them to MetroWest Law Corporation ("MetroWest"), the law firm that handled the Form S-1 filings.

Dalmy's only alleged defense at trial was her incredible claim that she did not *authorize* the filing of her opinion letters with the SEC. That assertion, however, is fatally undermined by Dalmy's own email exchanges – with both MetroWest and the SEC – which plainly indicate that she authorized her 18 opinion letters for filing with the SEC. Dalmy's creative attempts at trial to explain away those emails served only to undermine her credibility and bolster the Division's request for sanctions against her. Indeed, Dalmy's explanations have evolved over time, and her willingness to tell any story necessary, no matter how fanciful, accentuates the need for strong sanctions against her.

TRIAL EVIDENCE AGAINST DALMY

The first section below summarizes Dalmy's admissions and the documentary evidence introduced against her at trial, which establish Dalmy's Section 17(a) liability (including her consent to the filing of her opinion letters). The second section details Dalmy's unconvincing attempts at trial to explain away that evidence.

I. Trial Evidence

Dalmy is an experienced corporate securities attorney, having practiced for the past 25 years. Tr. 15-16.[1] The 18 Forms S-1 at issue – filed with the SEC from July 2012 through January 2013 – contain Dalmy's 18 legal opinion letters. Tr. 18-21, 24, 131-133; Exs. 1-10, 14-15, 18-21, 24-25, 92 (pp. 18-21). Each Dalmy opinion letter states that she "investigated" the Issuers, including reviewing a number of enumerated Issuer documents. Tr. 28-30; Exs. 1-10, 14-15, 18-21, 24-25. Both at trial and in her prior SEC investigative testimony (Ex. 92), Dalmy admitted that she conducted no such investigation concerning seventeen of the Issuers. Tr. 29-32; Ex. 92 (pp. 24-25, 33-34, 40-41).[2] Dalmy further admitted that she provided all 18 opinion letters to MetroWest, which was handling the Forms S-1 filing with the SEC. Tr. 27; Ex. 92 (p. 18). Dalmy nonetheless claimed at trial that her letters were "drafts" which she had not authorized for filing with the SEC. Tr. 20-21, 38, 51-52. The documentary evidence, however, establishes that Dalmy did indeed authorize MetroWest to file her opinion letters with the SEC as part of the Forms S-1.

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[1] "Tr." refers to the May 27, 2015 hearing transcript in this case; "Ex." refers to the Division's trial exhibits.

[2] Likewise, in a February 2014 press release (Ex. 88), Dalmy states that she had "no knowledge of any of the facts regarding the registration statements filed."

A. The Opinion Letters and Dalmy's MetroWest and CorpFin Emails

First, Dalmy's opinion letters neither indicate nor suggest that they were mere "drafts." To the contrary, each contains Dalmy's electronic signature block and the following express authorization for filing:

> I hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of my name in the Prospectus constituting a part thereof in connection with the matters referred to under the caption 'Interests of Named Experts and Counsel'.

Exs. 1-10, 14-15, 18-21, 24-25. Dalmy admitted at trial that each of her opinion letters contained her standard electronic signature block and standard consent language (quoted above), and that none of her opinion letters indicated in any way that they were "drafts" (or that they were otherwise unauthorized). Tr. 37-38.

Moreover, Dalmy's contemporaneous email exchanges with MetroWest strongly imply that she authorized her letters to be included in the Forms S-1. For example, from December 18 to 20, 2012, Dalmy engaged in the following email exchange with MetroWest employee Alexandra (Sandy) Vargas (non-relevant portions omitted):

- Vargas (December 18): "Would you kindly provide [MetroWest] with legal opinion letters for [Issuers Braxton Resources Inc. and Gold Camp Explorations Inc.]. We are looking to file as soon as possible."

- Dalmy (December 20): "Sandy -- finalizing Gold Camp and will send over shortly. Were the other two registration statements filed?"

- Vargas (December 20): "Not yet. John [Briner] has been out of the office, but will be back today to review the final draft before we send it off for filing."

- Dalmy (December 20): "Thanks -- and let me know if you need me to re-date the opinions re [Issuer] Clearpoint and other one."

Ex. 95 (pp. 21-22).

The above emails strongly imply that Dalmy authorized MetroWest to file the subject opinion letters with the SEC, and they contain no indication that Dalmy intended to withhold such authorization. Ms. Vargas told Dalmy on December 20 that MetroWest was "looking to file as soon as possible" (that day), after MetroWest attorney John Briner reviewed the "final draft," thus plainly indicating that MetroWest was about to "file" Dalmy's opinion letters with the SEC (and plainly indicating that any opinion letter Dalmy sent would be filed with the SEC). Furthermore, Dalmy's question regarding whether "the other two registration statements" had been "filed" plainly indicates Dalmy's own understanding that MetroWest was in the process of actually filing her opinion letters with the SEC (with Dalmy's consent).[3]

Moreover, from December 10, 2012 through February 18, 2013 – shortly after the filing of each of at least nine of the Forms S-1 that Dalmy claims were unauthorized – Dalmy repeatedly sent emails to CorpFin authorizing it to send Dalmy any comment letters regarding those Forms S-1.[4] Exs. 96, 269. Dalmy admitted at trial that: (1) she was familiar with CorpFin's comment process at that time; (2) she understood that CorpFin's practice was to contact the attorney whose name appeared on the first page of the Form S-1 to inquire whether that attorney was authorized to receive CorpFin comments regarding the registration statement

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[3] Dalmy admitted at trial that, by the "other two registration statements," she meant two of the registration statements whose SEC filing she now claims she did not authorize. Tr. 43-44.

[4] For example, Dalmy sent CorpFin the following email on February 18, 2013, regarding the January 31, 2013 Bonanza Resources Corp. Form S-1:

> Tiffany [Posil] - I hereby authorize the Securities and Exchange Commission to send any all comment letters relating to the registration statement filed on behalf of Bonanza Resources Corp. to the email addresses below:
>
> ddalmy@earthlink.net
> bonanzaresourcescorp@gmail.com

(on the Issuer's behalf); (3) CorpFin contacted Dalmy for this purpose regarding the Forms S-1 that were the subject of the above emails; and (4) Dalmy thus was aware at the time both that her name appeared on the front page of each of those Forms S-1, and that each of them contained her opinion letter. Tr. 54-56, 62-63.[5] Dalmy further admitted that she never informed CorpFin that her opinion letters were not authorized. Tr. 73-75.

Finally, on January 28, 2013 – almost two months after Dalmy's CorpFin email correspondence began – Dalmy had the following email exchange with MetroWest's Sandy Vargas regarding payment for her opinion letters:

Sandy Vargas January 28, 2013 email:

> Would you mind sending us your invoice for all of the legal opinion letters you had provided, including the 6 you are working on now. I believe there was a total of 17? Once I receive that we can forward payment to you.

Dalmy response the same day:

> Sandy -- I will do so. I will send a separate invoice for each company. Also, I am working on only 5 today and you said there were six:
>
> 1. Bonanza Resources
> 2. CBL Resources
> 3. Kingman River Resources
> 4. Lost Hill Mining
> 5. Yuma Resources
>
> Are we missing one?

Ex. 95 (pp. 14-15).

Thus, long after Dalmy first told CorpFin that she would accept its comment letters regarding the Forms S-1, she agreed to provide MetroWest an "invoice for each" Issuer. It

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[5] CorpFin attorney Tiffany Posil testified that CorpFin is the SEC Division charged with reviewing filed Forms S-1 and commenting on them, prior to their becoming effective registration statements. Tr. 149-51.

defies common sense that Dalmy would have stated her intent to do so – and that MetroWest was ready to pay her for all 17 opinion letters – unless Dalmy had provided authorized opinion letters for each. Again, at no time in Dalmy's January 28, 2013 email exchange with MetroWest did Dalmy even suggest that her opinion letters were not authorized for filing with the Forms S-1.[6] Indeed, as Dalmy admitted at trial, at no time did she otherwise tell MetroWest (or anyone else) in writing that she was withholding such authorization (or even hint at doing so). Tr. 24-26, 38-39, 65-66.

Thus, Dalmy plainly authorized all of her legal opinions to be filed with the SEC. Even if one stretches credulity to believe (as Dalmy claims) that she did not initially authorize her opinion letters to be included in the Form S-1 filings, her subsequent communications with CorpFin shortly after each filing constituted her ratifications of those letters. *See Orix Credit Alliance v. Phillips-Mahnen, Inc.*, No. 89 Civ. 8376 (THK), 1993 WL 183766, *4-5 (S.D.N.Y. May 26, 1993) ("Ratification is the express or implied adoption, *i.e.,* recognition and approval, of the unauthorized acts of another . . . One may be deemed to have ratified the acts of an agent through silence when there is an opportunity to speak and, under the circumstances, a desire to repudiate would normally be expressed"). If Dalmy truly did not authorize her opinion letters, she had a duty to so inform CorpFin when she learned days later than they had been filed. By doing the opposite – *i.e.*, informing CorpFin that she was authorized to accept CorpFin comments regarding the Forms S-1 – Dalmy implicitly ratified her opinion letters. As noted

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[6] Dalmy's trial testimony regarding this email exchange was nonsensical. She testified that her promise to Ms. Vargas to send her "a separate invoice for each company" was "sarcastic," but at the same time claimed that she "was going to send an invoice for $18,000 for each company" for which she had an alleged separate (oral) understanding with MetroWest attorney John Briner. Tr. 51-53.

above, Dalmy *never* informed CorpFin that her opinion letters were unauthorized (or otherwise sought to withdraw them). Tr. 73-75.[7]

B. **Dalmy's Subsequent Attempts To Cover Up Her False Opinion Letters**

Beginning in June 2013, Dalmy engaged in several attempts to cover up her false opinion letters – by making false statements to the SEC and the public, and during the trial in this case.

It was not until June 2013, five months after issuing her opinion letters, that Dalmy first notified the Commission of an issue concerning them, and she did so only after learning that the Division was investigating the Issuers. On June 17, 2013, the Division sent Dalmy a series of letters enclosing courtesy copies of investigative subpoenas that the Division had served the same day on the Issuers. Ex. 85. Those letters prompted Dalmy to leave Division counsel a voice mail message on June 27, stating the following:

> Hi Jason [Sunshine], My name is Diane Dalmy, and I'm telephoning you with regards to La Paz Mining Corp, uh, NY dash 8922. Well, with regards to the several copies of subpoenas that I received for about, I think, sixteen or seventeen different companies. I wanted to let you know that I am not counsel to any of these companies, um, I have never entered into to any type of engagement relationship, engagement letter. I have never been paid any legal fees. Uh, I did provide draft opinions in connection with, uh, certain registration statements; however, I was not even aware that some of these registration statements had even been filed.
>
> Um, so, I have no knowledge of any of these companies. They're not my clients. Uh, actually they're John Briner clients, and, um any other questions you might have, please give me a call: 303 985 9324. Otherwise, I have also uh, certainly, advised John Briner of the fact that I received these courtesy copies of the subpoenas, um, but I have never, I haven't even received a response from him. So, thank you very much. Bye.

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[7] Dalmy admitted at trial that she understood the "ratification" doctrine at the time, but that she did not believe that her "silence" constituted such ratification. Tr. 76. Dalmy is incorrect regarding the law of ratification, and her claimed ignorance of the legal effect of her actions simply lacks credibility.

Exs. 85-87, 92 (pp. 62-63); Tr. 79-82. Dalmy's voice mail message was, at best, highly misleading, if not outright false. Contrary to her message, Dalmy had indeed agreed to act as "counsel to the Issuers" – for the purpose of receiving their CorpFin comment letters. Furthermore, Dalmy had provided more than mere "draft" opinion letters for the Issuers, and she was aware that the Forms S-1 had been filed with the SEC. In any event, Dalmy's June 2013 voice mail message was the first time she made any such claims to anyone at the Commission (although she still did not notify CorpFin). Tr. 81-82.

At about the same time, in late June and early July 2013 – also prompted by the June 2013 Division subpoenas – almost all of the Issuers applied to the Commission to withdraw their Forms S-1. *See e.g., Braxton Resources Inc.*, Release No. 9410 (July 3, 2013) (Commission Order denying Braxton Resources' June 26, 2013 withdrawal request); *Clearpoint Resources Inc.*, Release No. 9411 (July 3, 2013) (same regarding Clearpoint Resources).[8] On July 5, 2013, after learning that the Commission had denied the first two of those withdrawal requests, *id.*, Dalmy sent Briner an agitated email stating, in pertinent part:

> John – this ALL needs to be remedied immediately as it is putting me in very difficult circumstances.
>
> 1. Received fax from SEC stating that Braxton and Clearpoint withdrawals are denied. I have no association with these companies and concerned.

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[8] *See also Bonanza Resources Corp.*, Release No. 9422 (July 17, 2013); *CBL Resources Inc.*, Release No. 9423 (July 17, 2013); *Chum Mining Group Inc.,* Release No. 9424 (July 17, 2013); *Coronation Mining Corp.*, Release No. 9425 (July 17, 2013); *Eclipse Resources Inc.*, Release No. 9426 (July 17, 2013); *Gaspard Mining Inc.*, Release No. 9432 (July 17, 2013); *Gold Camp Explorations Inc.*, Release No. 9427 (July 17, 2013); *Goldstream Mining Inc.*, Release No. 9428 (July 17, 2013); *Jewel Explorations Inc.*, Release No. 9429 (July 17, 2013); *Kingman River Resources Inc.*, Release No. 9430 (July 17, 2013); *La Paz Mining Corp.*, Release No. 9412 (July 17, 2013); *Lost Hills Mining Inc.*, Release No. 9431 (July 17, 2013); *Seaview Resources Inc.*, Release No. 9419 (July 17, 2013); *Tuba City Gold Corp.*, Release No. 9420 (July 17, 2013); *Yuma Resources Inc.*, Release No. 9421 (July 17, 2013).

Dalmy Ex. 1.[9]

Dalmy did nothing further regarding her opinion letters until February 2014, shortly after the Commission instituted Stop Order proceedings against the Issuers. On February 3, 2014, the Commission instituted the Stop Order proceedings. Ex. 110.[10] A week later, Dalmy responded by issuing a press release denying any involvement with the Issuers. Tr. 82-83; Ex. 88; Ex. 92 (p. 66). Dalmy's February 10, 2014 press release – issued more than a year after her false opinion letters – was the first time Dalmy claimed publicly that her opinion letters were unauthorized, Tr. 82-83, and she issued the press release only to try to protect herself from SEC scrutiny.

Moreover, Dalmy's February 2014 press release contains a number of knowing false statements:

> Upon identification of [the Issuers], Ms. Dalmy stated that she had no knowledge of the use of her name or identity associated with the filing of the registration statements and opinions related thereto. . . . Ms. Dalmy stated, 'I have been very concerned with my name being associated with these mining companies of which I had no general knowledge of the use of my name or opinion until contacted by the Securities and Exchange Commission during 2013. . . . The Law Office of Diane D. Dalmy did not file or authorize the use of its name or opinions with any of these companies or individuals.'

Directly contrary to her February 2014 press release, Dalmy did not first learn in 2013 that the Issuers were using her "name" and "opinions" in their registration statements.[11] To the

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9 "Dalmy Ex." refers to Dalmy's trial exhibits.

10 Those proceedings ended with a March 20, 2014 default initial decision against the Issuers. Ex. 112 (*La Paz Mining Corp., et al.*, Admin. Proc. File Nos. 3-15715 through 3-15734 (Mar. 20, 2014)).

11 Dalmy's press release statement that she was "contacted by the [SEC] during 2013" plainly referred to the Division's June 2013 letter to Dalmy enclosing the Issuer subpoenas (Ex. 85).

contrary, Dalmy's emails to CorpFin and MetroWest establish that, by early December 2012, Dalmy knew very well that the Issuers were using both her name and opinion letters in the Forms S-1. Dalmy's awkward and false attempts in her press release (and earlier voice mail message) to cover up her prior involvement with the Issuers serve only to discredit further her alleged defense in this case.

II. Dalmy's Trial Testimony Lacks Credibility

Dalmy's attempts at trial to explain away the above documentary evidence lack credibility, both on their face and in light of her prior inconsistent SEC testimony. Most of Dalmy's assertions rest exclusively upon her own (strained) readings of the documents, and/or upon undocumented conversations she claims to have had with MetroWest attorney John Briner. As explained below, the documentary evidence contradicts the existence of any such conversations. Nonetheless, rather than admitting the truth, Dalmy made increasingly absurd and inconsistent attempts at trial to conform her story to the strong documentary evidence against her.

To begin with, Dalmy claimed that it was her practice only to consent to SEC filings expressly and in writing – by sending an email to the "EDGAR agent." Tr. 32-34; *see also* Ex. 92 (pp. 42-43). At the same time, however, Dalmy admitted both at trial and in her SEC testimony that, contrary to her claimed practice, she *orally* authorized John Briner to file her Stone Boat opinion letter with the SEC, without sending him any such written consent. Tr. 34-35; *see also* Ex. 92 (pp. 42-44).

Dalmy also absurdly claimed that the references in her December 2012 MetroWest emails to the Forms S-1 having been "filed" (or as shortly to be "filed") referred to her sending them to an "EDGAR agent," as opposed to being "filed" with the SEC. Ex. 95 (pp. 21-22); Tr.

41-42, 44-45, 110, 136-37. Dalmy apparently concocted this story solely to explain away the words "file," "filed," and "filing" that appear in those emails – the natural reading of which is an *SEC* filing. However, other than Dalmy's own testimony, no evidence exists that any Form S-1 was "filed" with an EDGAR agent (as distinct from its having being "filed" with the SEC). Indeed, on cross-examination, Dalmy ultimately admitted that the electronic EDGAR system is the SEC's sole filing system for registration statements such as the Forms S-1, and that the "filing" of a Form S-1 on EDGAR is synonymous with filing it with the SEC. Tr. 19, 139-40.[12]

Dalmy also attempted to deflect her MetroWest and CorpFin emails (Exs. 95, 96, 269) by claiming that, in late November or early December 2012, she had agreed orally with Briner to provide him "draft" opinion letters for a "number" of registration statements; that Briner would later determine which registration statements he would file with the SEC (and so notify Dalmy); and that she understood only "three or four . . . actually would be filed" (with Dalmy's express written consent). Tr. 23-26. This story, again, rests solely on Dalmy's uncorroborated testimony. Moreover, it is contradicted by the CorpFin and MetroWest emails, which establish that Dalmy already knew by early December 2012 that MetroWest was filing her opinion letters with the SEC, and that it was doing so shortly after she submitted each letter to MetroWest.

An illustrative example concerns the November 30, 2012 Chum Mining Form S-1 filing. On November 28, 2012, Briner emailed Dalmy, asking "Would you . . . be willing to be counsel on this [Chum Mining] S1 as well and provide legal opinion?" Ex. 95 (p. 17). Two days later, on November 30, the Chum Mining Form S-1 was filed with the SEC, with Dalmy's name and

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12 To the extent Dalmy claims that MetroWest employed an EDGAR "agent" to "EDGAR-ize" the Forms S-1 for filing (*i.e.*, to *prepare* them electronically be filed on EDGAR), any such claim is beside the point. Dalmy admitted that "filing" a Form S-1 on EDGAR is the same as "filing" it with the SEC, whether that filing is completed by an EDGAR agent or otherwise. Tr. 19, 139-40.

contact information on the cover page, and containing a Dalmy legal opinion. Ex. 5 (legal opinion at p. 45). Seven days later, on December 7, CorpFin attorney Ronald Alper left Dalmy a voice mail message regarding the Chum Mining Form S-1. Ex. 96 (pp. 2-3).[13] Thus, by approximately a week after Dalmy submitted her Chum Mining opinion to Briner, she knew that Briner had filed it with the SEC. Three days later, on December 10 (and again on December 11), Dalmy emailed CorpFin attorneys Alper and Tiffany Posil, authorizing CorpFin to send Dalmy its comment letters regarding the Chum Mining Form S-1. *Id.* Dalmy subsequently repeated this same process for at least nine other Issuers, from December 2012 through February 2013.[14] Thus, contrary to her trial testimony, Dalmy knew at the time that Briner was not "determining" which Forms S-1 (and which of her opinion letters) to file with the SEC. Rather, she knew that Briner was filing her letters with the SEC as soon as she provided them to him.

Dalmy's further attempts at trial to resolve the inconsistencies between her story and the CorpFin emails likewise lacked credibility. Dalmy claimed that CorpFin's first telephone call to her (in early December 2012) "totally caught me off guard," and that she "telephoned John

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[13] Dalmy's December 10, 2012 email to Alper notes his December 7 voice mail message. Ex. 96 (pp. 2-3). In addition, CorpFin attorney Tiffany Posil testified that the Dalmy/Alper telephone and email exchange was an example of CorpFin's standard practice at that time. Tr. 152-54, 161-62.

[14] On December 13, Dalmy completed this same process regarding the Eclipse Resources Inc. Form S-1, Ex. 96 (p. 4); on January 7-8, 2013 for Braxton Resources, Inc. and Clearpoint Resources, Inc., *id.* (pp. 5-6); on January 29 for Jewel Explorations and Gaspard Mining Inc., *id.* (pp. 7-8), Ex.269; and on February 18 for Bonanza Resources Corp., Kingman River Resources Inc., and CBL Resources Inc., Ex. 96 (pp. 9-11). Thus, for example, on December 18, 2012, MetroWest asked Dalmy for an opinion letter regarding Braxton Resources, Ex. 95 (p. 22). Two week later, on January 2, 2013 (after the holidays), MetroWest filed the Braxton Resources Form S-1 with Dalmy's opinion letter. Ex. 2 (letter at p 45). A week later, on January 8, 3013, Dalmy authorized CorpFin to send her its comments regarding the Braxton Resources Form S-1. Ex. 96 (p. 5).

Briner and left a scathing voice mail message basically laced with profanities that I did not really want to put in an email asking him why I was getting calls from the SEC with respect to the filing of certain registration statements." Tr. 56-57. According to Dalmy, Briner replied that "three or four" of the registration statements had been "inadvertently filed." *Id.* 57. Dalmy then allegedly asked Briner to "withdraw" those registration statements, which he allegedly agreed to do. *Id.* At the same time, Dalmy claimed, Briner asked her nonetheless to consent to receive CorpFin's comment letters regarding those same registration statements – because receipt of those letters will "take about 30 days," during which time Briner could "work on withdrawing the registration." *Id.* 57-58. This explanation is riddled with internal inconsistencies and other serious credibility problems.

First, Dalmy's CorpFin emails (Exhibits 96 and 269) establish that she continued to agree to accept CorpFin comment letters – for at least nine Issuers – from early December 2012 through at least mid-February 2013, far more than the thirty days that Briner supposedly claimed he needed to withdraw previously-filed comment letters. Nor did Dalmy provide a plausible explanation as to why Briner needed thirty days to withdraw any Forms S-1 (or to notify CorpFin that there was a potential problem with them); why she continued to accept comment letters from CorpFin through February 2013 (or, for that matter, why she forced CorpFin to go through its comment process regarding those Forms S-1); or why she did not simply tell CorpFin herself that her opinion letters were unauthorized (which she never did). Tr. 60-63; *see also* Ex. 92 (p. 58). Dalmy's only explanation was that she "trusted" that Briner would withdraw the registration statements. Tr. 62-63. Given the multiple Forms S-1 that Briner filed over a two-month period (from December 2012 through February 2013) – and

Dalmy's multiple emails to CorpFin acknowledging those filings and agreeing to accept CorpFin comment letters regarding them – Dalmy's explanation simply is not credible.[15]

Furthermore, in attempting to adapt her story to the CorpFin emails, Dalmy contradicted her prior SEC testimony. During her SEC testimony, Dalmy claimed that she first learned of MetroWest's unauthorized use of her opinion letters – and had extremely angry words with Briner regarding them – in mid-February 2013, not early December 2012. Ex. 92 (pp. 53-62); Tr. 58-59; Exs. 90, 91. She gave that testimony after being shown her February 2013 email exchanges with Briner (Dalmy was not shown the 2012 CorpFin emails during her SEC testimony). Exs. 90, 91, 92 (pp. 53-54). At trial, however, Dalmy was forced for the first time to address her earlier CorpFin emails – which established that, in fact, Dalmy knew of the Form S-1 filings by December 7, 2012. Dalmy's telling response was simply to change her prior testimony to fit the new documentary evidence. Contrary to her prior SEC testimony, Dalmy testified at trial that she first learned of the Form S-1 filings – and had angry words with Briner regarding them – in early December 2012. Tr. 59-61.

Finally, Dalmy's claim that she asked Briner to "withdraw" the Forms S-1 as soon as she learned about them (in December 2012) is not supported by any documentary evidence. In fact, the documentary evidence establishes that Briner did not attempt to withdraw the Forms S-1 until late June 2013, shortly after the Division notified the Issuers and Dalmy that it was

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[15] Dalmy's claim that she "trusted" Briner is further undermined by her contemporaneous knowledge of Briner's regulatory history. Dalmy admitted at trial that, as of December 2012, she knew (1) that Briner was listed on the OTC Markets' prohibited attorneys list; and (2) that Briner had been sued by the SEC for securities fraud. Tr. 96-97; Exs. 101, 105. Dalmy denied having known, however, that the SEC litigation resulted in a District Court judgment and SEC administrative order against Briner in 2010 (both of which included strong sanctions). Tr. 98; Exs. 106, 107. However, this Court should not credit Dalmy's claimed ignorance, given her strong incentive at the time to know Briner's background (due to their close collaboration regarding the Forms S-1), and given her lack of credibility generally regarding her dealings with Briner.

investigating the Issuers. Dalmy Ex. 1; Ex. 85; *see, e.g.*, *Braxton Resources Inc.*, Release No. 9410 (July 3, 2013). Thus, if Dalmy had angry words with Briner regarding withdrawal of the Forms S-1 (as she claims), it was not until June or July 2013.[16] In any event, Dalmy's July 5, 2013 email to Briner is the *only* documentary evidence of *any* discussion between Briner and Dalmy regarding potential withdrawal of the Forms S-1. Contrary to Dalmy's testimony, any such discussion thus occurred at least six months after Dalmy knew that her false opinion letters had been filed with the SEC, and only because Dalmy became concerned about a possible SEC action against her (not because her opinion letters were unauthorized, as she now claims).

Dalmy also attempted unconvincingly to explain away the inconsistency between her CorpFin emails and her February 2014 press release (Exhibit 88). The thrust of that press release was that Dalmy was not involved in the Issuers' Form S-1 filings and did not learn of them until well after the fact. Ex. 88. Thus, for example, Dalmy stated in her press release that, "I had no general knowledge of the use of my name or opinion until contacted by the Securities and Exchange Commission during 2013." Ex. 88. This statement was plainly false – the CorpFin emails establish that Dalmy knew by early December 2012 that her name and opinions were being used in the Form S-1 SEC filings. Exs. 96, 269; Tr. 55-56, 62-63. At trial, Dalmy attempted to address this contradiction by asserting: (1) that the press release actually referred to *CorpFin's* having contacted her *in 2012*; and (2) that she mistakenly used the date "2013" in the press release, rather than "2012." Tr. 84-86. Both of these assertions are nonsensical, as the purpose of the press release was to convince the public that Dalmy had *not* known of the Form S-1 filings in *2012* but, rather, had first learned of them well *after* they were filed (i.e., "during

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[16] Such a discussion is suggested by Dalmy's July 5, 2013 email to Briner, in which she notes the Commission's denial of two Issuer withdrawal requests, and admonishes Briner that "this ALL needs to be remedied immediately as it is putting me in very difficult circumstances." Dalmy Ex. 1.

2013"). Indeed, as explained above, the SEC *did* send Dalmy a letter on June 17, 2013 notifying Dalmy of its investigation of the Issuers and their Forms S-1 (and noting Dalmy's involvement with them). Ex. 85. That letter prompted Dalmy to telephone the SEC several days later (on June 27) and leave a voice mail message distancing herself from the Issuers (in a manner similar to her later press release). Exs. 85-87, 92 (pp. 62-63); Tr. 79-81.[17] Thus, the June 2013 SEC letter plainly was the SEC contact "during 2013" to which Dalmy's press release refers. Dalmy's denial of this fact at trial – and her other strained attempts to conform her press release to the prior CorpFin emails – further undermined her credibility.

DALMY VIOLATED SECTION 17(A) OF THE SECURITIES ACT, AND STRONG SANCTIONS ARE WARRANTED AGAINST DALMY

The trial evidence establishes that: (1) Dalmy issued the 18 opinion letters at issue and authorized them to be filed with the SEC or, at the least, ratified those filings shortly afterward; (2) each Dalmy opinion letter contained material false statements that Dalmy had investigated the Issuers; (3) Dalmy knew that her 18 opinion letters were false when filed; (4) Dalmy subsequently made false statements to the Division and the public to attempt to cover up her fraud; and (5) Dalmy gave material false testimony during both her May 19, 2014 SEC testimony and May 27, 2015 trial. Accordingly, the Division respectfully requests an initial decision finding that Dalmy violated Section 17(a) of the Securities Act, and imposing strong sanctions against her.

I. Elements of Section 17(a) Liability

Securities Act Section 17(a) makes it "unlawful for any person in the offer or sale of any securities" by use of "interstate commerce or by use of the mails, directly or indirectly"

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[17] Dalmy issued her February 2014 press release shortly after the Commission instituted its Stop-Order proceedings against the Issuers, Ex. 110, which Dalmy admits was at least one reason that she issued her press release. Tr. 82-83; Ex. 92 (p. 66).

> (1) to employ any device, scheme, or artifice to defraud; or
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

15 U.S.C. § 77q(a). The Division discusses each of these elements and subsections in greater detail below.

A. Offer or Sale

Securities Act Section 2(a)(3) defines the term "offer" broadly to "include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 15 U.S.C. § 77b(a)(3). The Forms S-1 clearly fall within this definition.

The Issuers' Forms S-1 begin by stating:

> The selling stockholder named in this prospectus namely . . . [the Issuer's] sole executive officer and director, is offering 12,000,0000 shares of common stock of [the Issuer] at $0.002 per common share. . . . The selling stockholder has set an offering price for these securities of $0.002 per common share and an offering period of 28 days from the initial effectiveness date this prospectus. This is a fixed price for the duration of the offering. The selling shareholder does not intend to extend the offering beyond the 28 day offering period.

Thus, the purpose of the Forms S-1 was to register the Issuers' stock for "offerings" within the meaning of Section 2(a)(3), and the Division's claims against Dalmy – which concern false statements in the Forms S-1 – satisfy the Section 17(a) "in the offer" requirement.

The Forms S-1 did not ultimately become effective (due to SEC Stop Orders related to the matters at issue in this proceeding), but that fact does not change the analysis. In this regard, the Commission has stated (in the analogous context of Securities Act Section 5):

> Generally speaking, section 5(c) of the [Securities] Act makes it unlawful for any person directly or indirectly to make use of any means or instruments of interstate commerce or of the mails to offer to sell a security unless a registration statement has been filed with the Commission as to such security. Questions arise from time to time because many persons do not realize that the phrase 'offer to sell' is broadly defined by the Act and has been liberally construed by the courts and Commission. For example, the publication of information and statements, and publicity efforts, made in advance of a proposed financing which have the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer in violation of the Act. The same holds true with respect to publication of information which is part of a selling effort between the filing date and the effective date of a registration statement.

Guidelines for Release of Information by Issuers Whose Securities are in Registration, Rel. No. 33-5180, 1971 WL 120474, *1 (1971); *see also SEC v. Liberty Petroleum Corp., et al.*, No. C-71-178, 1971 WL 294, *2-3 (N.D. Ohio Sept. 2, 1971) (New York Times advertisement for sale of securities – for which no effective offering circular was on file with SEC, and which stated that it was "neither an offer to sell nor a solicitation" – constituted "offer" under Securities Act Section 2(a)(3)). The SEC's interpretation of the federal securities laws is entitled to deference. *See SEC v. Zanford*, 535 U.S. 813, 819-20 (2002) (SEC's reasonable interpretation of Securities Exchange Act Section 10(b) "is entitled to deference"). The Forms S-1 were filed on the Commission's EDGAR database and, thus, were available to the public. Therefore, they constitute "offers" for the purposes of Securities Act Section 17(a).

B. Section 17(a)(1)-(3)

The Division charges Dalmy with having violated all three subsections of Section 17(a). The following distinctions apply to those subsections.

To begin with, "[a] showing of scienter is required under Section 17(a)(1), but a showing of negligence suffices under subsections (a)(2) and (a)(3)." *John Briner, Esq.*, Rel. No. 2555, Admin. Proc. File No. 3-16339, 2 (Apr. 17, 2015) (Order on Motion for Summary

Disposition) (quoting *John P. Flannery*, Exchange Act Rel. No. 73840, 2014 WL 7145625 (Dec. 15, 2014)).

Furthermore, Section 17(a)(1) covers "all scienter-based, misstatement-related misconduct," including a "single misstatement." *Id.* (quoting *Flannery*). Thus, anyone "who (with scienter) 'makes,' 'drafts[,] or devises' 'a material misstatement in the offer or sale of a security has violated Section 17(a)(1).'" *Id.*, at 2-3 (quoting *Flannery*).

"[L]iability [under Section 17(a)(2)] . . . turns on whether one has obtained money or property 'by means of' an untrue statement." Thus, Section 17(a)(2) liability "may be premised on the *use* of a misstatement even if the user has not himself made a false statement in connection with the offer or sale of a security." *Id.*, at 3 (quoting *Flannery*; internal quotation marks omitted).

Section 17(a)(3) liability is based on "any *transaction*, practice, or course of business[.]" *Id.* (quoting Section 17(a)(3)). Thus, although a *single* false statement might not constitute a "transaction," "practice," or "course of business" for Section 17(a)(3) purposes, *id.*, a series of false statements may constitute a "practice" or "course of business." *John P. Flannery*, Exchange Act Rel. No. 73840, 2014 WL 7145625, *18 (Dec. 15, 2014) ("one who *repeatedly* makes or drafts [material] misstatements over a period of time may well have engaged in a fraudulent 'practice' or 'course of business'").

C. Section 17(a)(1) Scienter

As noted above, only Section 17(a)(1) requires a scienter showing. The Commission in *John P. Flannery* described that scienter requirement as follows:

> Scienter is an intent to deceive, manipulate, or defraud. It may be established through a heightened showing of recklessness. Extreme recklessness is an extreme departure from the standards of ordinary care, … which presents a danger of misleading buyers or sellers that is either

> known to the defendant or is so obvious that the actor must have been aware of it.

John P. Flannery, 2014 WL 7145625, at *10, n.24 (citations and quotation marks omitted). Thus, under "Section 17(a)(1), [a respondent] may be held liable if he acted with extreme recklessness; he need not have had actual knowledge that his misrepresentations would mislead investors." *Id.* at *22.

II. Dalmy Violated Section 17(a)

As explained in the preceding section, Dalmy knowingly issued 18 false legal opinions included in the Forms S-1 and, thus, violated Section 17(a)(1). Dalmy admitted at trial and in her SEC investigative testimony that: (1) she submitted each of her opinions to MetroWest (the Issuers' agent for SEC filings); (2) she did not conduct the "investigation" of seventeen of the Issuers described in her opinion letters; and (3) thus, she knew that her opinion letters were false at the time they were filed. Her only alleged defense was her claim that she did not authorize the Issuers to file those seventeen opinion letters. However, as explained above, Dalmy's claim is fatally undermined by her contemporaneous email exchanges with MetroWest and CorpFin, and her incredible testimony regarding those exchanges and related documents, which plainly establishes that she authorized the filing of her opinion letters with the SEC.[18] Alternatively, as also explained above, Dalmy ratified her opinion letters shortly after they were filed with the SEC. Either way, Dalmy is responsible for the submission and filing with the SEC of her 18 false opinion letters.

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[18] Dalmy admits that she authorized the filing of her July 2012 Stone Boat opinion letter, but claims (as to only that letter) that she conducted the investigation described therein. In light of Dalmy's admitted failure to conduct the Issuer investigations described in her seventeen other opinion letters (and given Dalmy's general lack of credibility), her starkly different claim regarding her Stone Boat letter lacks credibility, and the logical conclusion is that her Stone Boat opinion letter likewise was knowingly false.

Dalmy's false opinion letters plainly were "material" for Section 17(a) purposes. The investing public can be expected to rely on such legal opinion letters – *i.e.*, that the Issuers' offered shares were "validly issued, fully paid and non-assessable." *See SEC v. Spectrum, Ltd.*, 489 F.2d 535, 542 (2d Cir. 1973) ("In the distribution of unregistered securities, the preparation of an opinion letter is too essential and the reliance of the public too high to permit due diligence to be cast aside in the name of convenience"); *SEC v. Greenstone*, No. 10 Civ. 1302 (MGC), 2012 WL 1038570, *5-7 (S.D.N.Y. Mar. 28, 2012) (attorney opinion letter relied upon by stock transfer agent satisfied materiality requirement for securities fraud); *SEC v. Czarnik*, No. 10 Civ. 745 (PKC), 2010 WL 4860678, at *5 (S.D.N.Y. Nov. 29, 2010) (same). Dalmy's opinion letters falsely stated that her legal opinions were supported (solely) by an investigation that, in fact, she had not conducted. Thus, Dalmy had no basis to issue her opinion letters, and their statements to the contrary plainly constituted material false statements, in violation of Securities Act Section 17(a)(1).

Furthermore, CorpFin counsel Tiffany Posil testified that, pursuant to Securities Act Regulation S-K Section 601(b)(5), 17 C.F.R. § 229.601(b)(5), CorpFin relies upon attorney opinion letters in determining whether a Form S-1 registration statement may be declared effective. Tr. 163-66. Ms. Posil further testified regarding what in particular CorpFin does to review attorney opinion letters:

> So the opinion of counsel as to legality of the securities being issued pursuant to the registration statement generally includes or generally is required to include an opinion with respect to those securities being legally or validly issued, fully paid and non-assessable. We typically look for that language. We also look to make sure that there are no unreasonable carve-outs or qualifications or limits with respect to jurisdiction.

Tr. 164-65.[19] In this case, as was her practice, Ms. Posil assured herself that the Forms S-1 that she reviewed contained appropriate attorney opinion letters, which included some of the false opinion letters supplied by Dalmy. Tr. 164-66. Contrary to her opinion letters, Dalmy did not, in fact, investigate the Issuers and, thus, had no basis for her stated opinions. Such information plainly was material to CorpFin's review process and, as noted above, would be material to a reasonable investor reviewing the Form S-1 Filing.

Regarding Section 17(a)(2), Dalmy admitted at trial that she received a $1,750 legal fee for her Stone Boat opinion letter. Tr. 46-48. Thus, Dalmy received "money" by means of a false statement, in violation of Section 17(a)(2).

Regarding Section 17(a)(3), Dalmy engaged in a "course of business" that "operated as a fraud or deceit" by authoring and issuing 18 materially false legal opinions for 18 Issuers. Indeed, the evidence establishes that Dalmy ran an illegal "opinion-mill" – readily issuing materially-false legal opinion letters for a fee.

Thus, the evidence establishes that Dalmy violated all three subdivisions of Securities Act Section 17(a).

III. Strong Sanctions Against Dalmy Are Warranted

The trial evidence supports the following relief against Dalmy: (1) an order requiring Dalmy to cease and desist from any future violations of Securities Act Section 17(a); (2) disgorgement of Dalmy's ill-gotten gains; and (3) civil money penalties. Strong sanctions are particularly appropriate in this case, given Dalmy's repeated and egregious false conduct;

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[19] On October 14, 2011, CorpFin issued a Staff Legal Bulletin that discusses CorpFin's understanding of the phrases "validly issued, fully paid and non-assessable." https://www.sec.gov/interps/legal/cfslb19.htm

her high degree of scienter; and her attempts to cover up her fraud with additional material false statements, during both the Division's investigation of this case and at trial.

A. Cease and Desist Orders

Section 21C of the Exchange Act, 15 U.S.C. § 78u-3, authorizes the Commission to order a person to cease and desist from violating, or causing any future violation of, any securities law or rule that the person has been found to have violated. *Rita J. McConville*, Admin. Proc. File No-3-11330, 2005 WL 1560276, at *15 (Jun. 30, 2005). In considering requests for such orders, the Commission considers the following factors:

> the risk of future violations, . . . the seriousness of the violation, the isolated or recurrent nature of the violation, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, the respondent's state of mind, the sincerity of assurances against future violations, recognition of the wrongful nature of the conduct, opportunity to commit future violations, and remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding.

Id. While the Commission will only impose a cease-and-desist order where it determines that a risk of future violation exists, the degree of such risk required to support a cease-and-desist order "is significantly less than that required for an injunction." *Id.* at *15 n.66.

Virtually all of these factors militate in favor of cease and desist orders against Dalmy. Her violations were recurrent (multiple false legal opinion letters), and they involved serious, recent, material false statements, and a high degree of scienter (i.e., knowing false conduct). Furthermore, if left unchecked, Dalmy will be able to continue her fraudulent activities, and she has not accepted any responsibility for their illegal activities. To the contrary, Dalmy's SEC and trial testimony (and ever-evolving story) is so farfetched as to undermine any assurances she might give either that she did not, or will no longer, violate Section 17(a). Furthermore, Dalmy's attempts to cover up her illegal activity with incredible testimony and false statements

to the SEC and public strongly indicate that she will violate Section 17(a) again. And it is only because the Division sought (and obtained) SEC administrative Stop-Orders against the Issuers before the Forms S-1 could become effective that the Division cannot now point to actual investor harm.

Dalmy's regulatory history is another factor supporting strong sanctions. On September 24, 2009, OTC Markets, Inc. ("OTC" or "Pink Sheets") placed Dalmy on its Prohibited Attorneys List, informing her that it would "no longer accept legal opinions from you or your firm." Exs. 101, 104; Tr. 88-90.[20] OTC's correspondence with Dalmy culminating in that decision exposes her lack of adequate concern regarding the appropriate role of a securities attorney issuing legal opinions, similar to her actions at issue in this proceeding.

On June 24, 2009, OTC sent Dalmy a letter describing a number of deficient attorney opinion letters that she had submitted to OTC and issuing her a "warning":

> This letter serves as a warning that upon submission of a further inadequate Attorney Letter, [OTC] may determine that it will not accept any Letter submitted by you or your firm on behalf of any issuer. And in doing so, Pink OTC Markets may also determine to publish your name on the list of Prohibited Attorneys located on the internet at http://www.pinksheets.com/pink/otcguide/issuers_service_providers.jsp?index=6.

Ex. 102; *see also* Tr. 91-92. OTC's June 2009 letter to Dalmy further explained:

> Each of your [deficient] letters stated that you reviewed the disclosure statements posted by the companies on the OTC Disclosure and News Service and that you are of the opinion that the information they provided 'complies as to form with Pink Sheets Guidelines for Providing Adequate Current Information.
>
> ***

[20] "The Pink Sheets, now known as OTC Market Group Inc., is 'an electronic inter-dealer quotation system that displays quotes from broker-dealers for many over-the-counter (OTC) securities.'" *United States v. Georgiou*, 777 F.3d 125, 130 n.2 (3rd Cir. 2015) (*quoting, OTC Link LLC,* SEC, http://www.sec.gov/answers/pink.htm).

> [OTC] is not able to consistently rely on your Attorney Letters. On multiple occasions, cursory reviews by [OTC] of the disclosure published by the issuers and cited in your opinion have revealed significant missing and/or inaccurate information. . . . [OTC] Markets Issuer Services Department . . . has sent you several notification emails highlighting some of these missing items. We have had multiple phone and email conversations with you whereupon you have admitted your knowledge of the deficiencies in the disclosure and the inaccuracies of your letters. It is also apparent that you are not able to follow our standard procedure of sending in an Attorney Letter Agreement before the posting of your letter on pinksheets.com.
>
> Submission of an Attorney Letter to [OTC] expressing the opinion that adequate current information is available pursuant to [OTC] Guidelines should occur only *after* you review the issuer's disclosure materials and are able to truthfully make such an assertion. [OTC] is not in the business of reviewing issuer disclosure and providing deficiency letters. That is a responsibility that you have agreed to undertake on behalf of your client.
>
> Recognizing that this is a relatively new process for some attorneys, we have been willing to work with individuals to educate them about the requirements for submitting an Attorney Letter. We have worked with you extensively regarding your submission of the Attorney Letters for all of the above mentioned issuers. However, with your continued submission of inadequate Attorney Letters and your subsequent communications with [OTC] regarding the company's disclosure materials, it is clear that you do not fully understand the requirements or are not taking the necessary time involved to submit an Attorney Letter and follow the appropriate steps in this process.

Ex. 102.

The same day, Dalmy responded to the above OTC letter by email, stating that she only reviews a client issuer's "information statement" after it is "posted" on the OTC; that she then informs the issuer of any deficiencies; and that, in any event, her clients "rely on [OTC] and its determination of deficiencies" (which, Dalmy stated, she corrects only after OTC has identified them). Ex. 103 (p. 2). OTC responded to Dalmy by email the following day, reminding Dalmy that it is the attorney's job "to review the disclosure statement and other documents posted by

the issuer on pinksheets.com to ensure they conform to [OTC] guidelines. You have repeatedly failed to do so." *Id.* (p. 1).

Thus, OTC's September 24, 2009 decision to bar Dalmy from continuing to furnish legal opinions to OTC was based on months of previous attempts to convince Dalmy to conform her practice to OTC guidelines. As OTC noted in its September 24, 2009 letter to Dalmy (Ex. 104), Dalmy continued to issue numerous plainly deficient opinion letters to OTC despite its prior warning to her. Furthermore, three years later, Dalmy issued the 18 false opinion letters at issue in this case. Thus, and for the additional reasons set forth above, unless stopped from doing so, Dalmy is likely to continue to issue improper opinion letters and/or to otherwise violate the federal securities laws.

For the foregoing reasons, the Court should order Dalmy to cease and desist from future violations of Securities Act Section 17(a).

B. Disgorgement

The Court enjoys broad equitable power to order respondents to disgorge profits from their illegal activities. *See SEC v. First Jersey Sec.'s Litig.*, 101 F.3d 1450, 1474 (2d Cir. 1996). "The effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable. The deterrent effect of an SEC enforcement action would be greatly undermined if securities law violators were not required to disgorge illicit profits." *Id.* The primary purpose of disgorgement is to deprive violators of their ill-gotten gains, thereby maintaining the deterrent effect of the federal securities laws. *Id.* The amount of disgorgement ordered "need only be a reasonable approximation of profits causally connected to the violation," and "any risk of uncertainty [in calculating disgorgement] should fall on the wrongdoer whose illegal conduct created the uncertainty." *Id.* at 1475 (citations omitted).

Here, Dalmy admits that she made $1,750 regarding her Stone Boat opinion letter. For the reasons set forth above, Dalmy should disgorge that ill-gotten gain.

C. Civil Money Penalties

Section 8A(g) of the Securities Act, 15 U.S.C. § 77h-1(g), permits the Court to impose civil monetary penalties that fall into one of three tiers, which increase with the seriousness of the violation. Under the third, or highest tier, the Court may award maximum civil penalties of $150,000 for each illegal "act or omission" by an individual respondent, *see id.*; *see also* 17 C.F.R. §§ 201.1003, 201.1004, if the Court determines that the act or omission involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement" and "resulted in . . . substantial losses or created a significant risk of substantial losses to other persons" or resulted in "substantial pecuniary gain to the person who committed the act or omission." 15 U.S.C. § 77h-1(g)(2)(C). "Civil penalties are designed to punish the violator and deter future violations of the securities laws." *SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007). "Disgorgement alone is an insufficient remedy, since there is little deterrent in a rule that allows a violator to keep the profits if [he] is not detected, and requires only a return of ill-gotten gains if [he] is caught." *Id.* at 331-32 (citation omitted).

Dalmy's egregious and repeated frauds – and the consequent risk of harm to potential investors in the Issuers – warrants the imposition of third-tier penalties. Furthermore, Dalmy's refusal to tell the truth – indeed, her attempts to cover up her fraud by making false statements and repeatedly offering incredible testimony in the face of the strong documentary evidence against her – warrants the issuance of a large monetary penalty against her.

A third-tier penalty in this case could be as high as $2.7 million – $150,000 for each of the 18 false legal opinions. However, because Dalmy's false opinion letters did not result in

actual harm to investors, and because Dalmy's monetary gains were relatively small, a penalty of $75,000 per false opinion letter (which is the maximum second-tier amount), for a total of $1.35 million, would be a sufficient penalty in this case. Indeed, the District Court in *SEC v. Jean-Pierre*, 12-cv-8886, 2015 WL 1054905 (S.D.N.Y. Mar. 9, 2015), recently used a similar formula in assessing a civil money penalty against a securities attorney who had forged a number of attorney opinion letters. *Jean-Pierre*, 2015 WL 1054905, *2 (in SEC enforcement action, Court issued default judgment against defendant attorney, including $1,425,000 civil money penalty, calculated as $75,000 second-tier penalty for each of 19 issuers for whom attorney issued forged opinion letters).

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court issue an initial decision finding Dalmy liable for violating Securities Act Section 17(a) and issuing against her the relief requested above.

Respectfully submitted,

Dated: June 24, 2015

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CERTIFICATE OF SERVICE

I, Jack Kaufman, certify that, on June 24, 2015, I caused the Division of Enforcement Post-Hearing Brief Against Respondent Diane Dalmy, to be served upon the following persons in the manner stated below:

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