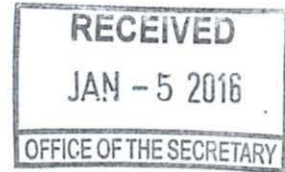


UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION



3-16386

In the Matter of  
Timothy W. Carnahan,  
CYIOS Corporation  
Respondents

Motion under Rule 111  
to Correct Manifest Errors of FACT  
CYIOS & CARNAHAN:  
10 days from "Initial Decision"  
PER ORDER: INITIAL DECISION  
Dated: December 21, 2015  
**DUE 1/1/2016**

**It has taken the SEC over 18 months to ultimately decide what we the respondents have stated day one - there are no Sarbanes Oxley 105 violations and there is no deceit, fraud or misstatements in this case (see transactions dated June 2014). We are using Rule 111(h) in order to allow the ALJ to correct the manifest errors of fact primarily due to the reversal of decision with no violation of Sarbanes Oxley 105. As it stands now, the decision is based upon rhetoric, opinion and false statements and not proof based upon facts; the integrity of the SEC is in question in this decision and needs to be rectified.**

**The issue under Rule 111 is a preliminary one, that is whether the Initial Decision contains manifest errors of fact. Rule 111(h) of the Commission's Rules of Practice specifies that "a motion to correct is properly filed under this Rule only if the basis for the motion is a patent misstatement of fact in the initial decision." A patent misstatement is something that is "readily visible or intelligible: obvious." Merriam Webster's Collegiate Dictionary, 849 (10th ed. 2001).**

To the extent that the Initial Decision Order intended to incorporate or substitute as findings of fact and conclusions of law, Respondents asks the Court to amend its findings and conclusions to correct manifest errors of law and fact consistent with the arguments in this case. Under FED. R. CIV. P. 52(b), a motion to amend findings of fact and conclusions of law must be predicated on the need to correct manifest errors of law or fact. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1219 (5th Cir. 1986). A court should correct its findings and conclusions when its judgment is not guided by sound legal principles such as: 1) when a court relies on clearly erroneous fact findings; 2) relies on erroneous conclusions of law; or 3) misapplies its factual or legal conclusions. *Alcatel U.S.A., Inc. v. DGI Techs, Inc.*, 166 F.3d 772, 790 (5th Cir. 1999).

**ALL CORRECTIONS** are statements of fact from the record and not arguments that belong in a petition for review pursuant to Rule 360 of Commission's Rules of Practice. We've merely restated our facts from the record where they have been changed to opinions and basic rhetoric and used as the "preponderance of evidence" by the ALJ.

**Summary that the  
Initial Decision contains manifest errors of fact**

The administrative proceeding #3-16386 had one focus that being the violation of Sarbanes-Oxley Section 105(c)(7). The SEC concatenated and attempted to conclude that CYIOS's internal controls should have prevented such a violation and that the controls were not assessed for effectiveness; thus falsely certified filings. The SEC continued to pile on alleged violations associated to the original Sarbanes-Oxley Section 105(c)(7) that being the certifications were falsified. With the Initial Decision now coming to conclusion, it has found there was no violation of Sarbanes-Oxley Section 105(c)(7). However, today the SEC is acting in prejudice toward the responders and continuing to state that these violations are independent in nature. This is completely UNTRUE and **the FACTS of this proceeding need to be restated based upon the Sarbanes-Oxley Section 105(c)(7) was not a violation. Once the real facts are used rather than rhetoric and opinion there will be no violations for CYIOS and Carnahan.**

**Manifest Errors of Law and Fact**

**#1 The statement below is UNTRUE and is not FACT and is followed by CORRECTION of the record of FACT.**

*Initial Decision 12/21/2015*

*II. Findings of FACT*

*D. CYIOS' Periodic Filings and Securities Offerings – page 7*

*“Carnahan purposefully decided to stop making CYIOS' periodic filings because the company could not afford to do so.”*

**#1 Correction from**

REPLY BRIEF:

CARNAHAN

November, 25 2015; page 7

**OIP 10-11 filings; Legal Argument C. from SEC Motion for Summary Disposition**

CYIOS filed March, 29<sup>th</sup> 2013 NT 10K and May 15<sup>th</sup>, 2013 NT 10-Q; CYIOS was having financial hardship and was not able to continue paying for auditors and lawyers for the filings so Timothy Carnahan did voluntarily file Form 15-12G as the appropriate paperwork May 29<sup>th</sup>, 2014 Notice of Termination of Registration. We have less than 300 shareholders 102 at the time of the filing. Moreover, we knew that we were still responsible for filing delinquent periodic reports. Mr. Carnahan called 202 551-3245 and spoke to SEC explaining we are going to do a merger and get all the delinquent filings up to date. If it had not been for the SEC Enforcement's case in question that started mid-June of 2014, we would have been compliant and the SEC would not have had and issue which would have been the best for the shareholders.

The SEC Enforcement investigation has harmed our company due to arbitrary and capricious claims because not one claim is based upon fact which Timothy Carnahan as thoroughly explained throughout the case. See email with SEC enforcement; as you can see the SEC was notified yet did NOT continue in an expeditious manner. Our claim is if it was NOT for the SEC investigation, we would have been compliant and merged. With this regard, the SEC

investigation clearly caused CYIOS' violations of Section 13(a) of the Exchange Act not to be corrected.

Attachment(s):  
CYIO Ltr 6-21-14.pdf

-----  
Date Sent: Saturday, June 21, 2014 8:08:41 PM  
Sent From: "Timothy Carnahan" <carnahan@cyios.com>  
Sent To: kingdr@sec.gov  
Subject: Fwd: Letter of Cancellation (see attached)

David,  
Hope your investigation has some substantial reasoning --- it is the direct cause of this letter.  
Tim:

---

Timothy W. Carnahan  
CEO  
2023691984  
CYIOS Corporation  
Ronald Reagan Building  
1300 Pennsylvania Ave,700  
Washington,20004

powered by [www.cyipro.com](http://www.cyipro.com)

We had been told from the merger group that they could not merge due to an SEC investigation; Mr. King leading the investigation had communications with a third party about CYIOS Corporation thus leading to a cancellation of the merger.

**#1.a Correction:**

Division of Enforcement's Post-Hearing Brief.pdf  
Post Hearing Opening Briefs from DOE  
Page 9

*Due to the reversal of the case and no SOX Violations, the record is not true; "Through his actions Carnahan deliberately... in contrast, the record supports that the SEC is at fault for creating substantial loss to CYIOS shareholders (As Stated in the above email about the merger that was stopped due to SEC FLAWED Investigation)", more so, the SEC should be held responsible for "causing CYIOS to "Los[e] a ton of business" unlike what SEC states that is was Mr. Carnahan's Fault.*

*The page further states "Lundelius describing the statue as "so clear and so basic on its face" that we violated SOX; yet per this Initial Decision, there is no violation; so needs to be stricken from the record.*

IT IS CLEAR THAT THESE STATEMENTS PLAYED INTO THE INITIAL DECISION AND NEED TO BE STRIKEN FROM THE RECORD.

**\*\*\* End of #1 Correction**

**#2 The statement below is UNTRUE and is not FACT and is followed by CORRECTION of the record of FACT.**

*Initial Decision 12/21/2015*

*II. Findings of FACT*

*D. CYIOS' Periodic Filings and Securities Offerings – page 8*

**#2 Corrections from**

REPLY BRIEF:

CARNAHAN

November, 25 2015: page 6 & 7

**\*\*\* Begin of #2 Correction**

In reference to (OIP ¶ 12-19), the SEC is completely making statements that are arbitrary and at face value wrong in stating Timothy Carnahan did not assess its internal controls of financial reporting (ICRF) using COSO. Our Internal Controls are governed and assessed using our in-house product CYIPRO as stated in several emails (see Internalcontrols.docx). Further, we have completely mapped CYIPRO to ISO 9001 framework to comply with COSO (please see attached Continuous\_Process\_Improvement\_Support.docx). This document was given to the SEC Staff August 25, 2014 2:28 PM.

Date Sent: Monday, August 25, 2014 2:28:25 PM

Sent From: "Timothy Carnahan" <carnahan@cyios.com>

Sent To: "King, David R." <KingDR@SEC.GOV>

Sent CC: "McGuire, Margaret S." <MCGUIREM@SEC.GOV>, "Peavler, David L." <PeavlerD@SEC.GOV>, "Woodcock, David R." <WoodcockD@SEC.GOV>

Subject: RE: CYIOS Corporation (FW-3921)

Attachments: [Continuous\_Process\_Improvement\_Support.docx]

Under Section 17(a)(2) the courts state there must be a “misstatement” and under 17(a)(3) there must be a scheme liability; see S.E.C vs St. Anselm Exploration Co., 936 F. Supp. 2d 1281, 1298-99 (D. Colo 2013); S.E.C vs Kelly, 817 F. Supp. 2d 340, 345 (S.D.N.Y.2011).

Since there has been no “misstatement”, “misrepresentation” and no “scheme”, both 17(a)(2) and 17(a)(3) SEC claims fail by law. Moreover, 17(a)(3) must be based upon something beyond the same claim of “misstatements” or “misrepresentation” which in this case we proved that there are not any misstatements or misrepresentations. See St. Anselm, 936 F. Supp. At 1298-99; Kelly, 817 F. Supp. 2d at 345.

Again, Carnahan and CYIOS did in fact evaluate ICFR for each 10-K and 10-Q. Carnahan and CYIOS do maintain documentation of management’s assessments of ICFR. As Carnahan discussed with the SEC back in July 2014, CYIOS does maintain “evidential matter, including documentation to provide reasonable support for management’s assessment of the effectiveness” of CYIOS’ internal control over financial reporting—the CYIPRO program based operating

system that Carnahan created was built with ICFR and COSO in mind. Carnahan's certifications that CYIOS had assessed ICFR are true.

**(OIP ¶ 20)** The issuance of common shares in reliance on 2009 filings (10-K) was not in violation due to misleading statement as the SEC has capriciously claimed because we proved we have a system in place CYIPRO in our above statement of fact. Form S-8's reliance upon this filing and the 2010 10-Q's are accurate.

#### **Legal Argument D & E from Motion for Summary Disposition**

Timothy Carnahan did not violate Rule 13a-15 or 13a-14 as ISO 9000:2008 is a recognized standard by the government of United States. As Rule 13a-15(c) states we do not have to use COSO but something similar. As the email stated Monday, August 25, 2014 we proved we used a suitable, recognized control framework.

**\*\*\* End of #2 Corrections**

**#3 The statement below is UNTRUE and is not FACT and is followed by CORRECTION of the record of FACT.**

*Initial Decision 12/21/2015*

#### *II. Findings of FACT*

##### E. Expert Evidence – page 8

ALJ Relied expressly on Expert opinion “**as the standard of proof**” that was totally based upon alleged violation of Sarbanes Oxley (section C. page 6), but here now with the “initial decision” the alleged violations have been proven NOT to be a violation; as such, the expert opinion is a moot point. Moreover, the Expert was proven in Court not to be a lawyer and stated, “I would need a lawyer to understand the case” see court transcripts. Nevertheless, there are NO FACTS to support any violations from Carnahan or CYIOS.

Moreover again, the following three statements are NOT FACTUAL and should be stricken from use as a “preponderance of the evidence” (see statement from ALJ “Initial Decision page 16”).

- 1) “In any event, CYIOS’ ICFR has gaping holes, which suggests it has never been assessed.”
- 2) *see* Div Ex. 3 at 100; Resp. Ex. 3. Rather, he essentially conceded in his post-hearing brief that he did not use the COSO framework for CYIOS’ ICFR assessments. *See* Carnahan Br. at 6 (“ISO 9000:2008 is a recognized standard . . . [and] we do not have to use COSO but something similar”). Indeed, he does not appear to have even a rudimentary understanding of COSO, much less an understanding sufficient to use it to assess CYIOS’ ICFR. *See, e.g.*, Tr. 212-13.
- 3) All such statements were false and failed to comply with both Rule 13a-14 and Rule 13a-15. Because Carnahan signed and was responsible for the contents of CYIOS’ periodic filings, he violated both Rule 13a-14 and Rule 13a-15. *See* Tr. 157-58; Div. Ex. 2 at 58, 60. Moreover, the contrast between Carnahan’s complete failure to assess ICFR and the statements to which he attested in CYIOS’ periodic filings was extreme, so much so that his statements were knowingly false. That is, Carnahan at least deliberately disregarded a regulatory requirement.

### **#3 CORRECTIONS:**

SEC Guidance. <http://www.sec.gov/info/smallbus/404guide/controls.shtml>

**The SEC doesn't have specific rules that tell smaller public companies how to do this. There is, however, useful guidance available from other sources. One of these is the internal control framework set out by a private sector organization called the Committee of Sponsoring Organizations of the Treadway Commission.**

See Corrections #2 as well

### **#4 The statement below is UNTRUE and is not FACT and is followed by CORRECTION of the record of FACT.**

*Initial Decision 12/21/2015*

The statement below from top of page 6 of the Initial Decision. We highlighted **unsupported opinion** that was used as FACT in Initial Decision as “preponderance of evidence” and thus should be stricken from the record as false statements or mere layman opinions. The SEC has not considered all the FACTUAL evidence submitted as (Continuous\_Process\_Improvement\_Support.docx ) and has never evaluated CYIPRO. It is virtually impossible for the SEC to construe what CYIPRO does or doesn't do for CYIOS. Moreover, the paragraph contradicts it's statements between the first and last statement.

**\*\*Begin Statement\*\*\***

CYIPRO also “provides key solutions for compliance with [Commission] Sarbanes-Oxley regulations and compliance with Defense Contract Audit Agency (‘DCAA’) and performance based contracting for government contractors.” *Id.* at 100. How CYIPRO accomplishes this is not clear. The most detailed description of CYIPRO in the record concerns its functionality as a personnel timekeeping system. *See* Resp. Ex. 3 at 1-2 (of 3 pdf pages). The description also claims that CYIPRO allows “accurate quantification of the costs on each project and process,” and provides for “continuous improvement and planning.” *Id.* at 2 (of 3 pdf pages). The description does not cite Sarbanes-Oxley, Commission regulations, or ICFR. *See generally id.*

**\*\*\* End Statement \*\*\***

### **#5 The statement below is UNTRUE and is not FACT and is followed by CORRECTION of the record of FACT.**

*Initial Decision 12/21/2015*

E. Expert Evidence – *page 8*

*Lundelius opined at the hearing on several other issues, including that: (1) under COSO, if CYIOS' software failed to detect the Order automatically, then a manual process for detecting it (such as checking the PCAOB's website) would have been required; (2) compliance with COSO standards cannot be achieved merely by compliance with ISO standards; and (3) CYIOS lacked human resources internal controls. See Tr. 213-15.*

**It is a FACT that manual review took place ( see Tr of Carnahan and Anderson) and Carnahan took appropriate action; thus from this initial decision deemed to be correct.**

**It is a FACT that SEC does NOT require you do use COSO – its just a guide as stated in #3 correction.**

**It is a FACT that our human resource has been automated with very little at all human intervention.**

**The ALJ used these arbitrary and capricious statements (see Carnahan reply Brief as this was pointed out) and converted them into “preponderance of evidence”.**

**CONCLUSION - REQUEST to DISMISS CLAIMS**

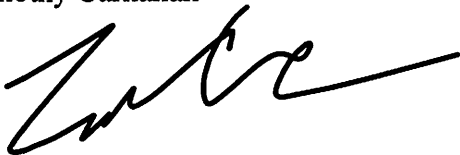
Based upon above, CYIOS respondents request for dismissal of the Administrative Proceeding collectively.

Vr,



\_\_\_\_\_  
Timothy Carnahan

12/24/2015  
(date)



\_\_\_\_\_  
Timothy Carnahan, CEO and President of CYIOS

12/25/2015  
(date)



Service List

In accordance with Rule 150 of the Commission's Rules of Practice, I hereby certify that a true and correct copy of the foregoing document was served on the persons listed below on the 24 day of December, via electronic mail (where indicated) and United Parcel Service (UPS) overnight mail :

Honorable Brenda P. Murray Chief Administrative Law Judge  
Securities and Exchange Commission 100 F Street, N.E.  
Washington, DC 20549-2557  
By Electronic mail: [ALJ@SEC.GOV](mailto:ALJ@SEC.GOV)

Chris Davis  
Timothy McCole  
801 Fort Worth Regional Office  
Securities and Exchange Commission 801 Cherry Street, Suite 1900  
Fort Worth, TX 76 102  
By Electronic Mail [DavisCa@SEC.GOV](mailto:DavisCa@SEC.GOV)

Traci J. Anderson, CPA  
[REDACTED] Charlotte, NC [REDACTED]  
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