



UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16386

IN THE MATTER OF  
  
TIMOTHY W. CARNAHAN,  
  
AND CYIOS CORPORATION  
  
RESPONDENTS

**NOTICE OF MOTION  
FOR CERTIFICATION OF ORDER FOR  
APPEAL PURSUANT TO 28 U.S.C.  
§ 1292(b); MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on **January 4, 2016** or as soon thereafter as the matter may be heard, before the Court THE RESPONDENTS shall move and hereby moves the Court for **certification of an interlocutory appeal**, pursuant to 28 U.S.C. § 1292(b), of this Court's Release **INITIAL DECISION RELEASE NO. 930** order ("Order"). This motion is based on this notice of motion, the accompanying memorandum of points and authorities, the Order, and all the pleadings, papers, and files in this case. An interlocutory appeal of this Court's Order would give the opportunity to address several important questions about the law in question. Specifically, Section 17(a)(3) of the Securities Act of 1933.

AN INTERLOCUTORY APPEAL IS APPROPRIATE UNDER 28 U.S.C. § 1292(b).

An interlocutory order is appealable under 28 U.S.C. § 1292(b) if: (1) the order has been certified for appeal by the Court, and (2) the Court, in its discretion, accepts the appeal. This Court should complete the first step by certifying that the Order is appropriate for immediate appeal under section 1292(b).

Under section 1292(b), there are three requirements for certification:

- ✓ The order involves a controlling question of law;
- ✓ There is a substantial ground for difference of opinion as to that question;
- And
- ✓ An immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b).

Here, all three requirements are met.

**The Order Involves Controlling Questions of Law.**

The Order involves several controlling questions of law. “[A]ll that must be shown in order for a question to be ‘controlling’ is that resolution of the issue on appeal could materially affect the outcome of litigation in the district court.” *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1982).

**There is Substantial Ground for Difference of Opinion on the Controlling Questions of Law.**

Under Section 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 “scheme”, 17(a)(3) SEC Division of Enforcement’s claims fail by law. Moreover, 17(a)(3) must be based upon something beyond the claim of “misstatements” or “misrepresentation” which in this case has been reversed due to law, the record should be cleared of any alleged misstatements or misrepresentations. See *St. Anselm*, 936 F. Supp. At 1298-99; *Kelly*, 817 F. Supp. 2d at 345.

**An Immediate Appeal May Materially Advance the Ultimate Termination of the Litigation.**

An immediate appeal may materially advance the ultimate termination of the litigation. “[N]either § 1292(b)’s literal text nor controlling precedent requires that the interlocutory appeal have a final, dispositive effect on the litigation.

It is sufficient that a reversal may take claims out of the case “[t]hat is sufficient to advance materially the litigation” and make certification of an interlocutory appeal permissible.

Date: 1/4/2016 9:49:59 AM  
Respondents submitted,  
Respectfully,



---

Timothy Carnahan



---

Timothy Carnahan, CEO and President of CYIOS

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 Reply to the Division of Enforcement's Summary Disposition was served on the persons listed below January 4, 2016 via United States Postal Service or email where indicated:

Honorable Brenda P. Murray Chief  
Administrative Law Judge SEC  
100 F Street, N.E.  
Washington, DC 20549-2557  
via USPS

Honorable Cameron Elliot  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557  
ALJ@sec.gov

Chris Davis  
Timothy McCole  
801 Fort Worth Regional Office  
Securities and Exchange Commission  
801 Cherry Street, Suite 1900  
Fort Worth, TX 76102  
DavisCa@SEC.GOV

Timothy W. Carnahan  
President and CEO and Chairman CYIOS  
Corporation  
*carnahan@cyios.com*

CYIOS Corporation  
c/o Timothy W. Carnahan, President, CEO  
and Chairman  
2637 E. Atlantic Blvd #28464  
Pompano Beach, FL 33062  
*carnahan@cyios.com*

Respectfully  
Timothy W. Carnahan

A handwritten signature in black ink, appearing to be 'Timothy W. Carnahan', written over a horizontal line. The signature is stylized and cursive.