UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17020

In the Matter of

Diane D. Dalmy, Esq.,

Respondent.

MOTION FOR SUMMARY DISPOSITION AND FOR AN ORDER DISQUALIFYING DIANE D. DALMY FROM APPEARING OR PRACTICING BEFORE THE COMMISSION, INCLUDING STATEMENT OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

TABLE OF EXHIBITS vi

INTRODUCTION 1

PROCEDURAL HISTORY 2

BACKGROUND 3

A. The Commission established that Dalmy knowingly violated Section 5. 4

1. Dalmy knew that Gasich was an affiliate of Zenergy. 5

2. Dalmy knew that Paradigm was a shell company. 7

3. Dalmy knew about touting activities in anticipation of dumping the worthless Zenergy stock on the public. 8

4. Dalmy engaged in additional misconduct related to the false opinion letters. 9

a. Dalmy lied to a broker-dealer about a backdated note. 9

b. Dalmy falsely represented that a consultant had been gifted shares. 10

c. Dalmy issued her final opinion letter despite admitted misgivings about Zenergy in light of increased regulatory scrutiny. 12

B. The Court granted the Commission's Motion for Summary Judgment against Dalmy 13

ARGUMENT 14

I. THE COMMISSION APPLIES THE *STEADMAN* FACTORS IN DETERMINING WHETHER THE PUBLIC INTEREST WILL BE SERVED BY DISQUALIFYING AN ATTORNEY FROM APPEARING OR PRACTICING. 14

II. APPLICATION OF THE *STEADMAN* FACTORS SUPPORTS DISQUALIFYING DALMY FROM APPEARING OR PRACTICING BEFORE THE COMMISSION FOR A SUBSTANTIAL PERIOD. 16

CONCLUSION 35

CERTIFICATE OF COMPLIANCE 36

CERTIFICATE OF SERVICE 37

TABLE OF AUTHORITIES

CASES

Ahmed Mohamed Soliman,
Exchange Act Release No. 35609, 1995 WL 237220 (April 17, 1995) 15

Albert J. Rasch, Jr.,
Exchange Act Release No. 60557 (Aug. 21, 2009) 33

Brian Dvorak,
Exchange Act Release No. 65446 (Sept. 30, 2011) 33

Brian Reiss,
Exchange Act Release No. 72335 (June 5, 2014) 33

Cameron Linton,
Exchange Act Release No. 67912 (Sept. 21, 2012) 33

Chris G. Gunderson,
Exchange Act Release No. 61234, 2009 WL 4981617 (Dec. 23, 2009) 15

Emanuel Fields,
45 S.E.C. 262, 1973 WL 149285 (June 18, 1973) 15, 32

Herbert M. Campbell II,
Release No. ID-266, 2004 WL 2413297 (ALJ Oct. 27, 2004) 30

John Carley,
Securities Act Release No. 8888 (Jan. 31, 2008) 23

Lester Kuznetz,
Exchange Act Release No. 23525, 1986 WL 625417 (Aug. 12, 1986) 15

Marrie v. SEC,
374 F.3d 1196 (D.C. Cir. 2004) 14

McCarthy v. SEC,
406 F.3d 179 (2nd Cir. 2005) 16

Michael Pattison,
Exchange Act Release No. 434, 2011 WL 4540002 (Sept. 29, 2011), *aff'd* Exchange Act Release No. 3407, 2012 WL 4320146 (Sept. 20, 2012) 32

Michael S. Krome,
Exchange Act Release No. 65799 (Nov. 21, 2011) 33

Omar Ali Rizvi,
Release No. ID-479, 2013 WL 64626 (ALJ Jan. 7, 2013) 31

Research Investment Group,
Securities Act Release No. 83871 (ALJ Feb. 17, 2004) 6, 31

SEC v. Cavanagh,
445 F.3d 105 (2nd Cir. 2006) 18

SEC v. Fehn,
97 F.3d 1276 (9th Cir. 1996) 15

SEC v. Jakubowski,
150 F.3d 675 (7th Cir. 1998) 20

SEC v. Ralston Purina Co.,
346 U.S. 119 (1953) 17, 33

SEC v. Spongetech Delivery Sys., Inc.,
2011 WL 887940 (E.D.N.Y. Mar. 14, 2011) 11, 25

SEC v. Zenergy Int'l, Inc., et al.,
N.D. Ill. Case No. 13-cv-05511. 2

Steadman v. SEC,
603 F.2d 1126 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) 15

Stephen G. Bennett,
Exchange Act Release No. 68592 (Jan. 4, 2013) 33

Steven Altman,
Exchange Act Release No. 63306, 2010 WL 5092725 (Nov. 10, 2010) 15, 32

Sundstrand Corp. v. Sun. Chem Corp.,
553 F.2d 1033 (7th Cir. 1977) 20

Touche Ross & Co. v. SEC,
609 F.2d 570 (2nd Cir. 1979) 14

Virginia Sourlis,
Exchange Act Release No. 70031 (July 23, 2013) 33

William R. Carter,
47 S.E.C. 471, 1981 WL 384414 (Feb. 28, 1981) 14, 30

Zacharias v. SEC,
569 F.3d 458 (D.C. Cir. 2009) 23

STATUTES

15 U.S.C. § 77e 1

OTHER AUTHORITIES

FINRA and SEC Investor Alert:
Dormant Shell Companies – How to Protect Your Portfolio from Fraud (Oct. 30, 2014) 31

In the Matter of Diane Dalmy,
Exchange Act Release No. 76740 (Dec. 22, 2015) 2

In the Matter of Diane Dalmy,
Exchange Act Release No. 76980 (Jan. 27, 2016) 2

RULES

Commission Rule of Practice 102(e) 1, 2

Commission Rule of Practice 250(b) 1

REGULATIONS

17 C.F.R. § 230.144 .... 4, 5, 7, 11

17 C.F.R. § 230.405 5

TABLE OF EXHIBITS

Exhibit 1 - August 1, 2013 SEC Complaint against Dalmy and others

Exhibit 2 - September 30, 2015 Court Order finding Dalmy violated Section 5

Exhibit 3 – June 12, 2009 Dalmy opinion letter

Exhibit 4 - June 10, 2014 transcript of Dalmy deposition testimony

Exhibit 5 - May 17, 2009 email from Wilding to Dalmy

Exhibit 6 - May 18-19, 2009 emails between Dalmy and Wilding

Exhibit 7 - June 3, 2009 email from Wilding to Dalmy

Exhibit 8 - Compilation of March 2009 emails between Wilding, Dalmy and others re potential merger partners for Paradigm

Exhibit 9 - July 20, 2009 emails between Gasich and Dalmy

Exhibit 10 - March 27, 2009 email from Wilding to Dalmy

Exhibit 11 - April 19, 2009 email from Wilding to Dalmy

Exhibit 12 - April 13, 2009 email from Wilding to Dalmy

Exhibit 13 - March 28, 2009 emails between Dalmy and Wilding

Exhibit 14 - March 31, 2009 emails between Dalmy and Wilding

Exhibit 15 - June 1, 2009 emails between Dalmy and counsel to a broker-dealer

Exhibit 16 - June 20, 2009 email from Dalmy forwarding June 16, 2009 email and attached opinion letter from Dalmy to Gasich and Wilding

Exhibit 17 - June 4, 2009 email from Gasich to Dalmy

Exhibit 18 – April 7, 2008 Zenergy Convertible Promissory Note

Exhibit 19 - August 26, 2009 Dalmy opinion letter of behalf of purported gift recipient

Exhibit 20 – May 30, 2009 Consulting Services Agreement

Exhibit 21 - Excerpt from September 1, 20011 Wilding investigative testimony

Exhibit 22 - December 15 and 17 emails between Dalmy and Cammarata

Exhibit 23 - December 28, 2009 Dalmy opinion letter on behalf of Cammarata

Exhibit 24 - Dalmy's Response to the Commission's Motion for Remedies

Exhibit 25 - Excerpt from July 22, 2011 Dalmy investigative testimony

Exhibit 26 - Screenshot from Dalmy's website

Exhibit 27 - June 24, 2009 letter from OTC Markets to Dalmy

Exhibit 28 - June 24-25, 2009 emails between Dalmy and OTC Markets

Exhibit 29 – September 24, 2009 letter from OTC Markets to Dalmy

Exhibit 30 - Initial Decision Release No. 886 (Sept. 18, 2015)

INTRODUCTION

Diane Dalmy—an experienced attorney who specializes in providing legal advice to issuers making public offerings of securities—played an integral role in, and personally profited from, a classic pump-and-dump scheme involving the penny stock Zenergy International, Inc. She provided bogus legal opinions that facilitated a scheme in which unsuspecting public investors were defrauded of $4.4 million. The district court that presided over the Commission's action against Dalmy found that her misconduct violated Sections 5(a) and 5(c) of the Securities Act of 1933, 15 U.S.C. § 77e.

Dalmy cannot contest the district court's findings supporting its conclusion that she violated Section 5, and the sole issue now is the appropriate sanction to be imposed under Commission Rule of Practice ("Rule") 102(e) for her professional misconduct. As there is no genuine issue with regard to any material fact, summary disposition is appropriate. Rule 250(b). Based on the factual findings in the district court's order and Dalmy's own admissions, it is clear that her conduct was egregious, was committed with scienter, and was part of a pattern of misconduct committed by an attorney with decades of experience in the securities industry generally, and the penny-stock industry particularly. To protect the integrity of the Commission's processes and to deter other attorneys from similar misconduct, the public interest weighs in favor of disqualifying Dalmy from appearing and practicing before the Commission for a substantial period commensurate with the severity of her misconduct.

PROCEDURAL HISTORY

On August 1, 2013, the Commission filed a civil enforcement action against Dalmy in the United States District Court for the Northern District of Illinois alleging that she violated Sections 5(a) and 5(c) of the Securities Act. Docket Entry ("DE") 1, attached as Exh. 1.[1] The district court ("Court") granted the Commission's motion for partial summary judgment, finding no genuine issue of material fact that Dalmy violated Section 5. DE 84, attached as Exh. 2.[2] Following the Court's determination that Dalmy violated the securities laws, the Commission filed a motion seeking pecuniary and injunctive remedies. DE 90. The Court has not yet ruled on that motion.

Based on the Court's decision, the Commission temporarily suspended Dalmy from appearing or practicing before the Commission as an attorney and instituted the instant proceeding. Exchange Act Release No. 76740 (Dec. 22, 2015). Dalmy filed a petition to lift the temporary suspension, which the Commission denied. Exchange Act Release No. 76980 (Jan. 27, 2016). At a prehearing conference, Dalmy agreed that this proceeding should be resolved by summary disposition.

[1] All references to the docket are to *SEC v. Zenergy Int'l, Inc., et al.*, N.D. Ill. Case No. 13-cv-05511.

[2] "DE 84" is the Court's Memorandum Opinion and Order ("Order") (Sept. 30, 2015). Dalmy may not contest the findings in that Order. *See* Rule 102(e)(3)(iv) (petitioner "may not contest any finding made against him or her or fact admitted by him or her in the judicial . . . proceeding upon which the proceeding under this paragraph (e)(3) is predicated.").

BACKGROUND

The Commission alleged that Dalmy played an integral role in a pump-and-dump scheme orchestrated by Bosko Gasich, co-founder of Zenergy, a purported biofuels company. Zenergy gained access to the public securities markets through a reverse merger with Paradigm Tactical Products Inc., a public shell company that purportedly sold security devices. As part of the merger, Paradigm assumed convertible debt securities Zenergy purportedly had previously given Gasich in consideration for a loan. The original conversion rate on those debt securities was $0.001 per share. As part of the reverse merger, the conversion rate was effectively changed to $0.0001, so that Gasich could convert his debt securities into 300—rather than 30—million shares of Zenergy. The effect was to give him control over 68% of the total number of shares outstanding and put him in position to control the new company.

Dalmy drafted the Share Exchange Agreement whereby Zenergy shareholders gained control over Paradigm, and prepared various board resolutions and other documents that were necessary to effectuate the transaction. Order at 5, 8. Gasich assigned portions of his debt securities to Dalmy, his family, his friends, associates of Paradigm, and others in June 2009. *Id.* at 8. Gasich and others instituted a touting campaign to raise the price of Zenergy shares after the merger. *Id.* at 1. Dalmy and the other assignees immediately exercised their conversion rights and promptly sold shares in the public markets after an extensive touting campaign that created a dramatic spike in Zenergy's share price. *Id.* at 7.

Zenergy shares were never registered. Insiders were able to sell their shares only because Dalmy prepared attorney opinion letters for at least 11 companies and individuals, including herself, opining that Zenergy shares received through Gasich's assignments were exempt from the registration requirements of Section 5 of the Securities Act and could be transferred without restriction. *Id.* at 8. The Commission alleged Dalmy violated Section 5 by selling shares and by authoring her opinion letters, because the Zenergy shares were not exempt from registration since Gasich was an affiliate of Zenergy and/or Paradigm was a shell company.

A. The Commission established that Dalmy knowingly violated Section 5.

In the various opinion letters she issued, Dalmy stated that "the requirements of Rule 144(b) have been met and the sale of the shares of common stock of [Zenergy] . . . will be exempt from the registration requirements of the Act under the exemption set forth in Rule 144(b)." *See, e.g.,* Exh. 3. But the Rule 144 safe harbor is not available when the shares are obtained from an "affiliate" of the issuer, or when the securities were issued by a "shell company." [3] The Commission's evidence established that the Zenergy shares were not exempt from registration because Gasich was an "affiliate" of Zenergy and because Paradigm as a "shell company." And the Commission's evidence demonstrated that Dalmy knew or should have known that her opinion letters were fatally flawed for those reasons when she issued them.

[3] *See* 17 C.F.R. § 230.144.

1. Dalmy knew that Gasich was an affiliate of Zenergy.

Under Rule 144, sellers of stock in a non-reporting issuer, like Zenergy, must comply with a one-year holding period, meaning a minimum of one year must lapse between the later of: (1) the date when the securities are acquired "from the issuer, or *from any affiliate* of the issuer" and (2) the subsequent re-sale of those securities. 17 C.F.R. § 230.144(d)(1)(ii) (emphasis added). The holding period indisputably was not met in this case, so the "only question is whether Gasich was an 'affiliate of the issuer,' Zenergy." Order at 11. Rule 144 defines an "affiliate" as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with [the] issuer." 17 C.F.R. § 230.144(a)(1). Rule 405 defines "control" as "the possession, direct or indirect, of the power to direct or cause the direction of management or policies of a person whether through ownership of voting securities, by contract, or otherwise." 17 C.F.R. § 230.405.

Dalmy's email communications demonstrate that she knew Gasich was an affiliate of Zenergy. Dalmy understood that the term "affiliate" includes shareholders who own at least 10% of a company's stock. Exh. 4 at 43. On at least *four* separate occasions, Dalmy received or sent emails stating that Gasich owned more than 10% of Zenergy's stock and/or that he was an affiliate of Zenergy:

- On May 17, 2009, Gasich told Dalmy that he was a "10%+ owner" of Zenergy, Exh. 5;
- On May 18, 2009, Scott Wilding[4] (a consultant who was Dalmy's primary contact on behalf of Paradigm during the merger discussions)[5] copied the

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[4] The Court noted that "Administrative Law Judge Brenda P. Murray had [previously] ordered Wilding to cease and desist from violating Sections 5(a) and (c) of

information from Gasich's earlier email and resent it to Dalmy, affirming that Gasich owned "10%+" of Zenergy, Exh. 6;

- On May 19, 2009, Dalmy **explicitly** recognized that "Gasich [w]as an affiliate" of Zenergy and that the shares assigned by Gasich were restricted, *Id.*; and
- On June 3, 2009, Wilding wrote Dalmy, "since bob [Gasich] **is an affiliate with zenergy (10%)**, not a director or control person do you see **any violations of rule 144 that could ever come back to haunt us**," Exh. 7 (emphasis added, errors in original).

While these emails only discuss Gasich's actual 10%+ stock ownership in Zenergy, Dalmy knew, based on her work preparing transaction documents, that Gasich's debt conversion rights allowed him to acquire control over approximately 68% of the company. *See* Order at 14. Thus, before she issued her legal opinions, Dalmy knew that Gasich could take complete control of Zenergy and was thus an "affiliate," making Rule 144 inapplicable. And Dalmy knew or was reckless in not knowing that Gasich exercised day-to-day control over Zenergy so that "separate from his ownership interests, Gasich possessed sufficient influence over Zenergy to confirm his status as an affiliate." *Id.* at 13.

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the Securities Act," *see* Order at 4 n.3, as a result of his participation in a similar pump-and-dump scheme. *See Research Investment Group*, Securities Act Release No. 83871 (ALJ Feb. 17, 2004).

[5] Wilding had been marketing Paradigm to companies seeking access to publicly-traded shares. Wilding, with Dalmy's assistance, engaged in unsuccessful merger negotiations with a purported seller of nutritional supplements before turning to the merger with Zenergy. Order at 4 n.4; Exh. 8.

2. Dalmy knew that Paradigm was a shell company.

The Rule 144 safe harbor is also unavailable to securities issued by shell companies. 17 C.F.R. § 230.144(i). A shell company is defined as a company with "no or nominal operations" and "no or nominal assets." *Id.* Although the Court found it unnecessary to formally rule on whether Zenergy and Paradigm were shell companies, *see* Order at 12 n.10, it repeatedly referred to Paradigm as such and quoted admissions from key participants in the scheme that Paradigm was a shell company. *See id.* at 3-5. For example, the Court cited Wilding's admission that "[t]here is no rationale [for merging two companies with different businesses]: one is a shell, there is nothing there, and one wanted to go public." *Id.* at 4.[6] The Court highlighted Dalmy's admission "that she understood that Paradigm would deliver 'zero' assets and liabilities at closing." *Id.* at 5. The Court cited Dalmy's website, which recognized the type of reverse merger entered into by Zenergy and Paradigm as a "method by which an active privately-owned operating company goes public by completing a transaction with a public shell company . . . ." *Id.* at 3.

And Dalmy's own emails show that she knew or was reckless in not knowing that Paradigm was a shell company. She was directly involved in discussions regarding identifying potential companies that Paradigm sought to merge with prior to Zenergy and knew, or should have known, that a willingness to merge with any number of companies in unrelated fields suggested that Paradigm was a shell

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[6] Paradigm's CEO, Vincent Cammarata, similarly admitted that Paradigm "had zero operating capital" at the time of the reverse merger. Order at 4. "[Robert] Luiten [Zenergy's co-founder] also understood that Gasich had identified Paradigm as a shell company 'for the purpose of entering a reverse merger.'" *Id.* at 5.

company. *See* Exh. 8. And on July 20, 2009, after the Zenergy/Paradigm merger—but before she authored many of her legal opinions—Dalmy emailed Gasich that she did not provide FINRA a fax number, email address, or website address for the company "because I did not think the company had such information." Exh. 9. Virtually any operational company would have these basic tools of business. Yet, in her numerous opinion letters to transfer agents—written both before and after she stated she did not believe the company had even this rudimentary information—Dalmy falsely opined that Paradigm "is not and has not been a shell corporation as defined in Rule 230.405 of the Securities Act." *See, e.g.*, Exh. 3.

3. Dalmy knew about touting activities in anticipation of dumping the worthless Zenergy stock on the public.

Dalmy issued her opinion letters despite being made privy to the plan to engage in a wide-scale promotion campaign immediately after Zenergy went public and the windfall profits expected to result:

- On March 27, 2009, Wilding forwarded Dalmy nine press releases about Zenergy that would be coming out "after we're public." Wilding observed that "15 more press release[s] [were] in the process of being written," and the "stock will open around 01 and go from there," Exh. 10;

- On April 19, 2009, Wilding forwarded Dalmy an email containing a draft press release claiming that the merger would bring Paradigm "tremendous business opportunity and generation of revenues" and that after the merger the new company "will explode into a promising new business that will make an astonishing presence around the world." Exh. 11; *see also* Exh. 12 (April 13, 2009 email from Wilding to Dalmy stating that Gasich was working on a press release "with what you [Dalmy] sent us").

- On May 28, 2009, Wilding wrote Dalmy that "[w]e're golden once the shares hit our accounts, payday is right around the corner," Exh. 13; and

- Days later, Wilding told Dalmy that "[w]ere so close to making a huge score . . . it's like we won the lottery but cannot cash in ticket for a few weeks." Exh. 14.

The purpose of the touting campaign was to create a short-term spike in Zenergy's share price so that insiders could profit from sales of Zenergy stock to unsuspecting public investors. And that is precisely what occurred: Dalmy sold 1 million shares of Zenergy stock for $43,995 in mid-August 2009. Order at 7. Without Dalmy's opinion letters, neither she nor the other insiders could have sold *any* Zenergy stock without going through the registration process or waiting the one-year holding period.

4. Dalmy engaged in additional misconduct related to the false opinion letters.

Dalmy's misconduct was not limited to her false opinion that Zenergy shares were exempt from registration. She committed a series of independent misdeeds to facilitate the scheme over the course of the six-month span in which she issued her opinion letters.

a. Dalmy lied to a broker-dealer about a backdated note.

As part of his "heightened due diligence" regarding one of Dalmy's letters prior to processing the sale of Zenergy shares, a broker-dealer requested information from Dalmy about the "verbal" amendment to Gasich's convertible notes to allow for cashless conversion. Exh. 15. The amendment permitting cashless conversion was critical to when the debt was considered "acquired" for the one-year holding period

requirements. *Id.*[7] Dalmy responded that "the verbal debt agreement is supported by a convertible note evidencing the debt." *Id.* The broker-dealer processed the shares based on Dalmy's representation. But Dalmy now contends that her representation to the broker-dealer was a "false statement." Exh. 4 at 249-50. She claims that "[t]here was no note. And I didn't reflect a note in any of my opinions." *Id.* at 249.

In fact, it is Dalmy's current contention that is false: there was a note—a note that had been backdated so that the holding period would appear to be met. *Id.* at 225-28. Dalmy now denies knowledge of the backdated note, but the note was based on a template she provided, the note was found in her files and she produced it to the SEC, and she emailed the note to an insider along with her opinion letter "for submission to the transfer agent with supporting documentation." *Id.* at 225-30; Exh. 16.[8]

b. Dalmy falsely represented that a consultant had been gifted shares.

Dalmy also made a misrepresentation with respect to an opinion letter issued August 26, 2009 to a different transfer agent. Dalmy's opinion letter represented

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[7] Counsel for the broker-dealer questioned whether Dalmy had any legal authority for her determination that the "verbal" amendment to the Zenergy debt to allow cashless conversion could be used for tacking purposes under Rule 144 to meet the holding period requirements. *Id.*

[8] On June 4, 2009, Gasich asked Dalmy to prepare a board "resolution ratifying the Zenergy Debt and terms thereof. If we don't have, we will need to prepare with current date but effective May 2007 – the date of the note – please adjust date on legal opinions." *Id.*; Exh. 17. The note actually created had a date of April 7, 2008. Exh. at 226; Exh. 18.

that she had examined an "Acknowledgment of Gift Shares dated August 7, 2009" in support of her opinion that the shares could be issued without registration.[9] Exh. 19. However, Dalmy could produce no evidence that such a document existed. She surmised it was in a box of documentation purportedly destroyed in a flood at her office[10] and on a computer that purportedly crashed. *Id.* at 267-68; *see also id.* at 18, 21-25. Moreover, she attached a consulting agreement to the same opinion letter (despite later claiming to have never seen said consulting agreement) that demonstrates that the "friend" receiving a "gift" was actually a consultant being paid for services rendered. *Id.* at 265-66; Exhs. 19-20.[11]

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[9] "Securities acquired from an affiliate of the issuer by gift shall be deemed to have been acquired by the donee when they were acquired by the donor." 17 C.F.R. § 230.144(d)(iii)(v). Therefore, if one receives shares as a bona fide gift, the recipient can tack on the time the affiliate held the shares to meet the holding period provisions of Rule 144(d); but someone who receives shares for services rendered is not permitted to tack the affiliate's or corporation's holding period to their own. *See SEC v. Spongetech Delivery Sys., Inc.*, 2011 WL 887940, at *17 (E.D.N.Y. Mar. 14, 2011) (attorney issuing opinion letter authorizing unrestricted sale of stock violated Section 5 where he "should have known that the shares were given for consideration," rather than as a gift).

[10] The flood also purportedly destroyed: (a) the Paradigm press releases Dalmy says she reviewed to determine that Paradigm was not a shell company, (b) research she says she did about Zenergy to ascertain it was not a shell company; and (c) the April 2008 financial statements she says she reviewed referencing the convertible debt held by Gasich. *Id.* at 90-92, 233.

[11] Dalmy claimed that Wilding gifted certain of his shares to a personal friend, *see id.* at 259-260, which Wilding denied. Exh. 21 at 141.

c. Dalmy issued her final opinion letter despite admitted misgivings about Zenergy in light of increased regulatory scrutiny.

Cammarata, Paradigm's CEO and an assignee of shares from Gasich, asked Dalmy for an opinion letter in mid-December 2009 to enable him to sell shares. Exh. 22. She initially responded that she was not providing any Rule 144 opinion letters at that time due to heightened regulatory scrutiny. Cammarata replied, "i cant beleiv you arent i am really discusted and pissed i asked for nothing ive been begging for months and i am owe this this is bullsshit i hope you atleat have the descency to finalize 1 request and get me what i am owed you promised you should reconsider and you wont hear from me again[.]" *Id.* (errors in original). Dalmy responded, "Vinny. This is killing me. I will. But I need to explain to you tomorrow." *Id.* She explained in a later email, "I am not going to write an opinion until I am satisfied that there are absolutely no issues regarding this company. I am not going to risk my license . . . I need to make sure that all is in order – **and I am not sure it is.**" *Id.* (emphasis added).

Despite her qualms about Zenergy and "the state of affairs in the industry involving FINRA and the SEC," Dalmy relented and issued an opinion letter on behalf of Cammarata. *Id.*; Exh. 23. It is unclear what (if any) additional due diligence Dalmy did to get "satisfied that there are absolutely no issues regarding this company," but her efforts (if any) clearly failed to uncover that her opinion letter was as fatally flawed as the other ten letters she wrote to further the Zenergy scheme.

B. The Court granted the Commission's Motion for Summary Judgment against Dalmy.

The Court held that there was no genuine issue of material fact that Gasich was an affiliate of Zenergy. *Id.* at 12.[12] Gasich owned approximately one-third of Zenergy's outstanding stock and his convertible debt, if exercised, gave him the right to own approximately two-thirds of the outstanding shares. *Id.* at 12-13. And "separate from his ownership interests, Gasich possessed sufficient influence over Zenergy to confirm his status as an affiliate," including serving as Dalmy's "primary contact[]" on Zenergy's behalf for merger negotiations. *Id.* at 13-14. The Court held that, "because of Gasich's affiliate status, Rule 144 required Dalmy to wait a year before she sold her Zenergy stock, since she acquired it from Gasich. She did not do so. Because Dalmy failed to comply with the one-year holding requirement, she cannot invoke the Rule 144 safe harbor or the Section 4(1) exemption." *Id.* at14. Accordingly, the Court concluded that Dalmy directly violated Section 5 because she sold "one million shares of Zenergy stock for $43,995" to "unsuspecting investors." *Id.* at 1, 9. The Court found that she "also violated Section 5 by serving as an indirect seller to the other assignees" because her false opinion letters enabled other insiders to sell shares to unsuspecting investors. *Id.* at 11 n.9. The insiders, including Dalmy, sold Zenergy shares after an "approximately tenfold" increase in Zenergy's share

[12] Because Gasich was an affiliate of Zenergy, the Court found it unnecessary to rule on whether Paradigm was a shell company, *see id.* at 12 n.10, but it did repeatedly refer to it as such. *Id.* at 3-5.

price following an "organized [] campaign to promote Zenergy in press releases" for a cumulative profit of approximately $4.4 million. *Id.* at 1.[13]

ARGUMENT

I. THE COMMISSION APPLIES THE *STEADMAN* FACTORS IN DETERMINING WHETHER THE PUBLIC INTEREST WILL BE SERVED BY DISQUALIFYING AN ATTORNEY FROM APPEARING OR PRACTICING.

The Commission relies on the diligence and competence of professionals who appear and practice before it, and has thus long recognized the appropriate use of disciplinary proceedings to protect the integrity of its processes. *See, e.g., Touche Ross & Co. v. SEC*, 609 F.2d 570, 579-82 (2nd Cir. 1979); *Marrie v. SEC*, 374 F.3d 1196, 1200 (D.C. Cir. 2004); *William R. Carter*, 47 S.E.C. 471, 1981 WL 384414, at *5 (Feb. 28, 1981) ("[I]f a lawyer violates ethical or professional standards, or becomes a conscious participant in violations of the securities laws, or performs his professional function without regard to the consequences, it will not do to say that . . . this Commission must stand helplessly by while the lawyer carries his privilege of appearing and practicing before the Commission on to the next client"). It is essential that the Commission be able to rely on the trustworthiness and probity of professionals who have an "especially central place . . . in the investment process and in the enforcement of the body of federal law aimed at keeping that process fair" and

[13] The Court declined to address Dalmy's contention that she acted in good faith. *Id.* at 9 n.6. But the Court specifically noted that Dalmy admitted that she "understood that Paradigm would deliver 'zero' assets and liabilities at closing" and that "Gasich had significant involvement" in the negotiations on behalf of Zenergy. *Id.* at 5, 14.

on whom the Commission is thus "peculiarly dependent." *Emanuel Fields*, 45 S.E.C. 262, 1973 WL 149285, at *3 n. 20 (June 18, 1973).

It is well-settled that the Commission considers a number of factors in assessing whether the public interest requires imposing administrative sanctions:

> In addition to considering that [a securities law violation has been found], the imposition of administrative sanctions requires consideration of: the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Commission's "inquiry into the appropriate remedial sanction 'is a flexible one, and no one factor is dispositive.'" *Chris G. Gunderson*, Exchange Act Release No. 61234, 2009 WL 4981617, at *5 (Dec. 23, 2009); *see also SEC v. Fehn*, 97 F.3d 1276, 1295-96 (9th Cir. 1996).

Consistent with the purpose of Rule 102(e), the Commission also considers the deterrent effect of a suspension. *See, e.g., Steven Altman,* Exchange Act Release No. 63306, 2010 WL 5092725, at *20 (Nov. 10, 2010) (imposing permanent suspension and noting that "other attorneys, who might be encouraged by a more lenient sanction to act in a similar fashion, must also be deterred"); *Ahmed Mohamed Soliman*, Exchange Act Release No. 35609, 1995 WL 237220, at *3 n.12 (April 17, 1995) (the selection of an appropriate sanction involves considering several elements, including deterrence); *Lester Kuznetz*, Exchange Act Release No. 23525, 1986 WL 625417, at *3 (Aug. 12, 1986) (noting that the sanction of a bar "serves the purpose of

general deterrence"); *McCarthy v. SEC*, 406 F.3d 179, 190 (2nd Cir. 2005) (noting that deterrent value is a relevant factor to consider in deciding length of suspension).

II. APPLICATION OF THE *STEADMAN* FACTORS SUPPORTS DISQUALIFYING DALMY FROM APPEARING OR PRACTICING BEFORE THE COMMISSION FOR A SUBSTANTIAL PERIOD.

Dalmy asserts that she made an innocent and isolated mistake and contends there "is simply no reason to conclude that [she] will be further tempted to violate the law." Exh. 24 (Dalmy's Opp. to SEC Motion for Remedies) at 9. But the record reflects that Dalmy's conduct was intentional, egregious, and recurrent. She violated her professional responsibilities as an attorney and her obligations to the investing public. Her misconduct, the need to protect the investing public, and the need to deter others tempted to engage in similar misconduct, warrant a substantial suspension.

➊ <u>Dalmy's Violations Were Egregious.</u>

Dalmy is an experienced securities lawyer who abused her position to personally profit from a pump-and-dump scheme. Dalmy was instrumental to the scheme: without her preparation of the transaction documents and at least eleven attorney opinion letters, none of the worthless Zenergy stock could have been sold to the investing public. Rather than protecting the investing public, she profited at its expense.

Dalmy's conduct was egregious because she knew that her opinion that Gasich was not an affiliate of Zenergy was false. She knew that Gasich owned more than 10% of Zenergy shares and after the merger could control 68 percent of the total shares outstanding. Order at 14. Dalmy also knew that Paradigm sought to merge

with another company, irrespective of its industry, and "understood that Paradigm would deliver 'zero' assets and liabilities at closing." *Id.* at 4-5. She therefore knew or was reckless in not knowing that Paradigm was a shell company. And Dalmy knew about the "organized [] campaign to promote Zenergy in press releases" to drive a sudden share price increase, *see id.* at 1, because she had been forwarded many draft press releases, was informed about others, and apparently drafted at least portions of some of the releases. Exhs. 10-12.

Dalmy argued before the Court that her actions were not egregious because she acted in good faith and she caused no harm, because, as she asserted, "[h]ad [she] not issued her opinion, Zenergy could have registered the shares and sold them publicly." Exh. 24 at 6. Alternatively, she asserts "Zenergy could have waited for the one-year affiliate waiting period to pass and then sell shares without registration." *Id.* Dalmy's circular logic that no investor was harmed by the registration violations because the shares could have been sold a year later ignores that the failure to register the securities when they were being sold unlawfully deprived the investing public of the financial and other disclosures about Zenergy that a registration statement containing accurate financial information provides. *See, e.g., SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953) (the "design of the statute [the Securities Act] is to protect investors by promoting full disclosure of information thought necessary to informed investment decisions"). Her contention also ignores that, had the true financial picture of Zenergy been revealed, it would have impeded the ability of the insiders—including herself—to sell shares to what the Court termed

"unsuspecting investors" after the stock shot up "approximately tenfold" due to the touting campaign in the approximately two-and-a-half months after the reverse-merger. Order at 1.

Dalmy argues there is no reason to believe that accurate financial information in a registration statement "would have tempered that demand" for Zenergy stock. Exh. 24 at 7. Her argument ignores the Court's determination that purchasers were "unsuspecting investors" and, by her contorted logic, the Commission should overlook her registration violations since (in Dalmy's view) disclosures in registration filings provide no value to the investing public. Her position ignores the law and is not a meritorious argument in support of her contention that her violations were not egregious. *See, e.g., SEC v. Cavanagh*, 445 F.3d 105, 115 (2nd Cir. 2006) ("Registration exemptions are construed strictly to promote full disclosure of information for the protection of the investing public.").

Most troublingly, Dalmy knew *before* issuing her first opinion letter that a touting campaign was planned for the period immediately after Zenergy went public, and that campaign was specifically designed to cause a short-term spike in Zenergy's share price that would lead to a "huge score" for Dalmy and other insiders. Exh. 14. Dalmy received at least nine press releases that had been drafted and was advised of 15 more being written that would cause the "stock [to] open around 01 and go from there." Exh. 10. She was told that the "payday is right around the corner" and that "it's like we won the lottery but cannot cash in [the] ticket for a few weeks." Exhs. 13-14.

That Dalmy, Wilding, and other insiders specifically plotted to cash in "right around the corner" and had to wait only "a few weeks" for their jackpot renders specious Dalmy's contention that she and other assignees could have simply waited for the one-year holding period to expire before selling.[14]

Between early June and mid-August 2009, the price per share of Zenergy stock increased approximately "tenfold" as a result of the touting campaign of which Dalmy was aware. *See* Order at 1, 7. Dalmy sold one million of the shares assigned to her in less than one week in mid-August during this dramatic appreciation of the stock. *Id.* at 7. Dalmy, like other insiders who similarly sold shares following the touting, clearly understood that the shares had to be unloaded before the investing public realized that they were essentially worthless. In fact, by March 2010, Zenergy shares were essentially worthless, *see id.* at 7, and any insider who held shares until that point would have missed the opportunity to sell his shares when they still had "value."

In sum, in facilitating this pump-and-dump scheme through her false opinion letters and other misconduct, Dalmy allowed her greed to overcome her professional obligations. Thus, her violations were egregious.

[14] Dalmy concedes that even this option would not exist if either Zenergy or Paradigm was a shell company. Exh. 24 at 6 n.1. As discussed above, while the Court found it unnecessary to specifically rule on that question, it repeatedly referred to Paradigm as a shell company—a description that is amply supported by the evidence.

❷ Dalmy Acted With A High Degree of Scienter.

Compounding the egregiousness of Dalmy's misconduct is the fact that she acted with a high degree of scienter. A defendant's scienter is established if she acted knowingly or recklessly. *SEC v. Jakubowski,* 150 F.3d 675, 681 (7th Cir. 1998) (citing *Sundstrand Corp. v. Sun. Chem Corp.*, 553 F.2d 1033, 1044-45 (7th Cir. 1977)). "Deliberate ignorance . . . is a form of knowledge." *Id.* at 181.

As chronicled on her own website, Dalmy was an attorney with decades of experience in the securities industry with a particular focus on providing legal advice to penny-stock issuers to enable them to sell their securities publicly. Exh. 26. Given her experience, Dalmy's contention that she made a single, honest mistake is belied by the overwhelming evidence available to her that Zenergy shares were not exempt from registration. When Dalmy wrote her opinion letters stating that the Zenergy shares were "free of any restriction on transfer" and without registration under Rule 144(b), she knew (or at the very least recklessly disregarded) that her statement was false and that the shares she claimed could be free-trading without restriction were actually intended for a pump-and-dump scheme.

First, she knew her opinion was false because Gasich was clearly an "affiliate" of Zenergy. Order at 14 ("Gasich was an 'affiliate' of Zenergy because Zenergy was under Gasich's control."). On at least four separate occasions, Dalmy received or sent emails expressly stating that Gasich owned more than 10% of Zenergy's shares (which rendered him an affiliate) and/or specifically referred to him as an affiliate. Exhs. 5-7. Wilding even explicitly emailed that Gasich "is an affiliate with [Z]energy

(10%)" and asked whether that could "come back to haunt us" with respect to Rule 144. Exh. 7. The Court also recognized that Dalmy knew through the documents she prepared and reviewed as transaction counsel that (a) Gasich controlled more than 50% of Zenergy shares outstanding as a result of his debt conversion, and (b) "separate from his ownership interests, Gasich possessed sufficient influence over Zenergy to confirm his status as an affiliate." Order at 13; *see also id.* at 14 (noting that Dalmy admitted "Gasich had significant involvement in the negotiations on behalf of Zenergy" and assisted in drafting documents necessary to effectuate the transaction).

Second, she knew, or was reckless in not knowing, that Paradigm was a shell company. As Dalmy's own website promoting her experience with reverse mergers states, "[m]ost public companies that enter into reverse mergers are shell companies, which are companies that have no significant operations or assets." Exh. 26. As the Court noted, Dalmy "admits that she understood that Paradigm would deliver 'zero' assets and liabilities at closing." Order at 5. The Court further stated that "other participants in the transaction also viewed Paradigm as a 'shell' company that had the ability to issue public shares." *Id.* at 4. Dalmy implicitly acknowledged that the transaction involved shell companies when she told Gasich that she "did not think the company had" a fax number, email, address or website—all necessary for genuine business operations. Exh. 9.

❸ Dalmy's Misconduct Was Recurrent.

Dalmy's contention that she simply made a single mistake ignores that she committed eleven separate violations of Section 5. She violated Section 5 as a direct seller of Zenergy stock and by authoring the attorney opinion letters that allowed her and the other ten Gasich assignees to sell their shares. Order at 5, 11 n.9.

Dalmy argues that, "[w]hile she wrote several opinion letters, the letters were the result of one mistake," i.e., opining that Zenergy shares were exempt from registration—and therefore she only "violated the law once." Exh. 24 at 12. This contention ignores that she issued these separate opinion letters, to separate individuals, over the course of many months, and after she became aware of significant evidence (assuming arguendo she did not know beforehand) that her opinion letters were false. To illustrate, Dalmy issued her first Zenergy opinion letter in mid-June 2009. Exh. 4 at 202; Exh. 3. Shortly after issuing that opinion, Dalmy claims that she was abruptly fired for "asking a lot of questions. I wanted a lot of documents on their business operations. I wanted to see every contract. I told them I wanted to see every—each and every press release that went out." Exh. 4 at 201-02. Despite supposedly being fired for asking too many questions—the answers to which might have shown that the merger involved shell companies and/or that the scheme participants were issuing false and misleading press releases as part of a pump-and-dump scheme—Dalmy issued subsequent opinion letters throughout the summer of 2009 without doing any further due diligence. *Id.* at 205. Dalmy contends that it "never crossed [her] mind" that being fired for asking for additional information

might be a sign that the information she had been provided—and supposedly relied upon in forming her opinions—had been inaccurate. *Id.* at 206. Given her expertise in the penny-stock world, it strains credulity to believe that her supposed termination raised no concerns with her. Dalmy was willfully blind to the evidence of misconduct before her as she continued to issue opinion letters, but as the Commission has recognized, willful blindness is no defense. *See, e.g., John Carley*, Securities Act Release No. 8888 (Jan. 31, 2008), *remanded in part on other grounds in Zacharias v. SEC*, 569 F.3d 458 (D.C. Cir. 2009).[15]

- <u>The July 1, 2009 representations regarding her opinion letter</u>

Dalmy committed separate misconduct in relation to her opinion letter on July 1, 2009, when counsel for a broker-dealer conducted "heightened due diligence" regarding Dalmy's opinion letter before processing the sale of the Zenergy shares. Exh. 15. The broker-dealer questioned Dalmy about whether a verbal amendment "can be used for tacking purposes under Rule 144" so that the holding period could be met sooner. *Id.* Dalmy responded that "the verbal debt agreement [which purportedly amended Gasich's debt to allow for cashless conversion] is supported by a convertible note evidencing the debt." *Id.* Dalmy now claims her representation to the broker-dealer about the existence of a "note" was a "false statement" and "[t]here

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[15] Her claim that she was terminated is itself suspicious given her continued work related to the transaction, *see id.* at 204-05, and one could question whether Dalmy fabricated her supposed termination in an effort to distance herself from her misconduct and the Zenergy scheme. Regardless of whether one credits Dalmy's termination claim, she engaged in serial misconduct that permitted the Zenergy scheme to continue well after issuing her first opinion letter.

was no note. And I didn't reflect a note in any of my opinions." Exh. 4 at 249-50. Making a "false statement" to a broker-dealer is itself a serious offense, but her misconduct is even more deceitful: there **was** a convertible note and Dalmy's representation to the broker-dealer that a written note existed was **true**. Why did Dalmy claim before the Court to have lied to a broker-dealer rather than acknowledge that she accurately referenced the note in response to the broker-dealer's inquiry? The answer is simple: the convertible note had been backdated so that the holding period would be shorter if it was necessary to rely on the one-year waiting period. *Id.* at 225-28; *see also* note 8 *supra.*

Dalmy's claims of ignorance of the existence of the note also ring false for other reasons: (a) she provided Gasich the template to use for the note, *id.* at 225;[16] (b) she had the note in her files and produced it to the SEC, *id.* at 225-26;[17] (c) she received an email from Gasich (with the exact same date ultimately found on the note) asking her to prepare a board resolution ratifying the note, *id.* at 229-30;[18] (d) Dalmy personally emailed the convertible note to an assignee along with her opinion letter

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[16] Dalmy contends that she provided the template to "utilize for future debt quote/unquote," but not for a (backdated) note to use with the Zenergy merger. *Id.*

[17] In testifying before the staff, Dalmy stated, "I have no idea how I received that [the note], when I received that, who sent it to me, who prepared it." *Id.* at 227. "There was no note, as far as I was concerned, in my mind." *Id.* at 226. She was "shocked" when she found it in her files. *Id.* at 228.

[18] Dalmy claimed she had "no idea what he [Gasich] meant in his email" and offered no explanation for how the date in the email happened to match the date in the convertible note—that wound up in her possession—in a way she cannot explain. *Id.* at 229-30.

"for submission to the transfer agent with supporting documentation," *see* Exh. 16;[19] and (e) Dalmy explicitly told counsel to a broker-dealer conducting due diligence that the debt agreement "is supported by a convertible note evidencing the debt." Exh. 15.

In sum, Dalmy deceived the broker-dealer. Either there was no note, as she now claims, and she knowingly made a "false statement" to the broker-dealer to assuage his concerns; or there was a note, as she represented to the broker-dealer, that she knew was backdated and thus could not be relied upon to permit the shares to trade.

- The August 26, 2009 opinion letter

Dalmy committed yet another transgression regarding an opinion letter dated August 26, 2009 to a different transfer agent. In her letter, Dalmy represented that she had examined an "Acknowledgment of Gift Shares dated August 7, 2009." In fact, no such document existed and the shares were not gifted to that individual. Instead, the recipient of these shares served as a consultant to the company and received these shares as compensation for services rendered. *Id.* at 265-66; Exhs. 19-20. The fact that the shares represented compensation for the consultant was significant because a recipient of a gift can use tacking to include the time the donor owned the shares to meet the one-year holding period requirements, but someone who receives shares as compensation cannot. *Spongetech*, 2011 WL 887940, at *17.

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[19] Dalmy said she had "no idea how this [became attached to her email to the assignee]—because I didn't use this and I didn't rely on this." *Id.* at 241. She then attempted to dispute that she actually attached the note, even though the time stamp on the email and the various attachments, including the convertible note, match. *Id.* at 239-42.

Whether Dalmy intentionally misled the broker-dealer to permit the sale of Zenergy shares, or she recklessly represented that she reviewed a document that does not exist, she committed independent misconduct.

- The December 2009 opinion letter

Dalmy agreed to write an opinion letter for Cammarata, the CEO of Paradigm, in mid-December 2009, despite her concerns about Zenergy and the increased regulatory scrutiny from the SEC and FINRA. Exh. 22. Although she said that Cammarata's request was "killing [her]" and she raised concerns about risking her law license, Dalmy relented and issued an opinion letter that allowed Cammarata's shares to trade freely. Exh. 23. Either Dalmy failed to do any further due diligence despite her serious qualms about the Zenergy transaction or, even after her supposedly heightened due diligence, she failed to recognize that Gasich was an affiliate of Zenergy (assuming arguendo she did not know this all along), and that Zenergy was a pump-and-dump scheme more broadly. Either way, her issuance of an opinion letter to Cammarata under these circumstances is an independent violation that particularly demonstrates her unfitness to practice before the Commission.

❹ Dalmy Has Not Given Adequate Assurances against Future Violations.

Dalmy has not provided any serious or credible assurances against future violations. Her claims that "it is unlikely her violations will recur due to the lessons learned in this case" and she "will be as careful as possible in her future dealings to

avoid any possibility of future improprieties"[20] ring hollow in view of the record here. She failed to learn from her initial misdeeds relating to the Zenergy scheme when she issued an opinion letter for Cammarata in December 2009, despite her own purported concerns about "the state of affairs in the industry involving FINRA and the SEC" and her concerns about whether "all is in order" regarding Zenergy. Exh. 23.[21]

[20] Exh. 24 at 9.

[21] As noted in the Commission's Complaint against Dalmy, she was previously placed on OTC's prohibited attorney list in 2009, due to her issuing inaccurate attorney opinion letters. OTC Markets advised Dalmy that she had submitted several opinion letters with "significant missing and/or inaccurate information" and that she would be placed on the prohibited attorney list if she continued submitting inadequate opinion letters. Exhs. 27-28. Despite this warning, OTC Markets subsequently found that she continued to submit "inadequate letters in support of inadequate disclosures" for at least five issuers, including one instance where Dalmy opined an issuer was not a shell company despite having no employees/contractors, no revenues, and nominal assets and expenses. Exh. 29. Therefore, OTC Markets placed her on its prohibited attorney least, meaning OTC Markets refuses to accept attorney opinion letters from her. *Id.* She remains on the prohibited attorney list. *See* http://www.otcmarkets.com/research/prohibited-attorney (last visited April 8, 2016).

The Commission also noted to the Court that, in a separate pending Commission administrative proceeding, Dalmy was found by an administrative law judge to have submitted false opinion letters in support of S-1 registration statements for seventeen different issuers. Exh. 30. ALJ Grimes determined that Dalmy "acted with a high degree of scienter," "lied during her testimony," and "disingenuously [said] that she was duped" by her co-defendant, John Briner. *Id.* She became enmeshed in the Briner fraud just weeks after submitting a response to the Commission's Wells notice to her in the Zenergy matter and despite knowing about Briner's "checkered regulatory history." *Id.* at 4. Therefore, even if one were to credit Dalmy's claim that she was duped by Briner, her failure to avoid unwittingly being used to perpetrate a fraud while she was expecting charges in this matter (and therefore should have been particularly cautious about engaging with a known violator of the securities law) undercuts any assurances she now offers against future violations.

Her statements that she will be as careful as possible going forward provide little assurance to the Commission or the investing public. The Commission should not accept Dalmy's self-serving statements that she has learned her lesson because her prior conduct has shown she has been unwilling, or at best unable, to learn from prior experiences that should have served as wake-up calls in the present case.

❺ Dalmy Has Not Recognized Her Wrongdoing.

Dalmy admits, as she must, that she violated Section 5. However, she has failed to recognize her wrongdoing. She continues to insist that she made an innocent and isolated mistake, even though she knew or should have known that her opinions were false.[22] She also attempts to minimize her role in the scheme and to downplay the impact of her misconduct.

Dalmy disclaims any responsibility for her critical role in a scheme that defrauded public investors out of at least $4.4 million, contending that her "actions did not cause harm to investors." Exh. 24 at 6. She implausibly claims that, "[h]ad [she] not issued her opinion, Zenergy could have registered the shares and sold them publicly" or waited for the one-year holding period. *Id.* Of course, in view of the time-sensitive nature of the pump-and-dump scheme, neither registration nor holding the

[22] It is not clear that Dalmy truly understands her transgressions. In arguing that she made an isolated error, she argues "only in this one instance did [she] accept client stock as compensation for services." Exh. 24 at 9. Accepting cash as compensation for deficient or false opinion letters is no more legally or ethically sound than accepting stock. It is her violations of the securities laws, not the method of her compensation *per se*, that warrants a suspension. But Dalmy's acceptance of stock in this case gave her an added incentive to ensure that the Zenergy scheme was successful so that she could profit when she sold shares into a market prepared by the touting campaign.

shares for a year was ever a realistic possibility. Prior to issuing her false opinion letters, she was shown many of the press releases that were part of the touting campaign to artificially increase demand for Zenergy shares. Exhs. 10-12. She was told that a "huge score" was coming and that it was "like we won the lottery but cannot cash the ticket **for a few weeks**." Exh. 14 (emphasis added). And, of course, she sold shares in mid-August, well short of a year, and in the midst of the rapid appreciation of Zenergy's stock resulting from the touting scheme. Order at 7.

In a further effort to deflect her wrongdoing, Dalmy argues that she "had little if any benefit from the funds [she received from selling her Zenergy shares] because she "did not spend the funds." Exh. 24 at 13. This contention is entirely unpersuasive—even had she not spent the funds, she still benefitted by adding $43,995 to her assets at the expense of innocent investors. But it's also yet another fabrication: during the investigation in this case, Dalmy testified that she used the funds from her Zenergy share sales to pay for living expenses: "Q: And your recollection is you used them for living expenses—A: Oh, absolutely . . . Absolutely, yes. I'm a sole practitioner." Exh. 25 at 172. This is yet another example of Dalmy's utter failure to recognize the nature and gravity of her misconduct that renders unpersuasive her "assurances" that she will not commit future violations.

Finally, she attempts to blame others for her misdeeds by claiming she was misled. Dalmy argues that if she "was wrong about Gasich's affiliate status it is because he mislead [sic] her." Exh. 24 at 3. She claims that she believed Gasich was merely a consultant for Zenergy who needed approval from Luiten and that she did

not realize that Gasich controlled the entity (Spire Group) that was Zenergy's largest shareholder. *Id.* at 3-4. Dalmy's argument, however, ignores that: (a) Dalmy knew that Gasich controlled greater than 10% of Zenergy shares, *see* Exhs. 5-7, (b) the Court recognized that Gasich told Dalmy how he planned to convert his shares through Spire Group, *see* Order at 5-6 n.5, and (c) the Court recognized that Gasich was Dalmy's primary contact for the transaction on behalf of Zenergy, *see id.* at 14. Dalmy was not misled—she was, at best, willfully blind to the facts before her that Gasich controlled Zenergy, both through his ownership interest and his day-to-day control of the company and the merger.

Dalmy cannot get credit for recognition of wrongdoing when she claims that she was duped by Gasich and that she had, at most, a trivial role in the fraud when, in actuality, her provision of the false legal opinions was absolutely critical to the success of the scheme.

❻ Dalmy Will Have Opportunities for Future Violations.

A licensed attorney practicing in the securities industry—such as Dalmy—remains in a position to violate the securities laws on behalf of clients and to harm the Commission's processes in the future. *See, e.g., Herbert M. Campbell II*, Release No. ID-266, 2004 WL 2413297, at *8 (ALJ Oct. 27, 2004) (permanently disqualifying attorney who recklessly violated the securities laws, in part because he could continue practicing commercial law); *William R. Carter*, 1981 WL 384414, at *5 ("wrongdoing by a lawyer . . . raises the spectre of a replication of that conduct with other clients"); *Omar Ali Rizvi*, Release No. ID-479, 2013 WL 64626 (ALJ Jan. 7,

2013) (respondent's "experience as an attorney, broker, and association with investment advisers, coupled with his continued access to the securities industry, provide an increased likelihood of opportunities for future violations").

Here there is a near certainty that Dalmy will have opportunities for future violations. Dalmy acknowledges that "[s]he helps small companies navigate securities laws. Her clients are generally issuers of penny stocks." Exh. 24 at 9; *see also* Exh. 26 (screenshot from Dalmy's website describing her as a "recognized leader" in advising on alternative public offerings and reverse mergers). Penny-stocks are rife with opportunities for violations of the securities law. *See, e.g., Research Investment Group,* Securities Act Release No. 83871 (ALJ Feb. 17, 2004) (ALJ Murray noting pump-and-dump schemes are a "common abuse" among small publicly-traded companies); FINRA and SEC Investor Alert: Dormant Shell Companies – How to Protect Your Portfolio from Fraud, available at https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543327365 (Oct. 30, 2014 (warning investors about penny-stock scams) (last visited April 8, 2016).

As Dalmy plans to continue her existing practice of representing "issuers of penny stocks," see Exh. 24 at 9-10, she will be presented with opportunities to violate the securities laws. To date, Dalmy has proven that she is unwilling and/or unable to operate in the fraud-riddled waters of penny-stocks without involving herself in violations of the securities laws. Because "unscrupulous lawyers can inflict irreparable harm on those who rely on the disclosure documents that they produce . . . [the Commission] hold[s] [its] bar to appropriately rigorous standards of professional

honor." *Emmanuel Fields*, 45 S.E.C. at 266 n.20. If Dalmy is not suspended from practicing before the Commission for a substantial period, there is no reason to believe she will comport herself with the integrity and diligence expected of a gatekeeper to the securities industry.

❼ Suspending Dalmy Will Serve as a Deterrent.

A lengthy suspension "will further the Commission's interests in deterrence, particularly general deterrence." *Michael Pattison*, Exchange Act Release No. 434, 2011 WL 4540002 (Sept. 29, 2011) (issuing a permanent bar even though the respondent was not found liable for fraud and his conduct was egregious "but not especially so"), *aff'd* Exchange Act Release No. 3407, 2012 WL 4320146 (Sept. 20, 2012); *see also Steven Altman*, Exchange Act Release No. 63306, 2010 WL 5092725, at *20 (Nov. 10, 2010) (imposing permanent suspension and noting that "other attorneys, who might be encouraged by a more lenient sanction to act in a similar fashion, must also be deterred").

The temptation to engage in misconduct for an attorney's and/or her client's financial benefit is ever present, particularly in the penny-stock arena. In the face of such temptation, the prospect of a light sanction by the Commission is hardly a deterrent to Dalmy and others who may be tempted to violate their ethical obligations to reap a windfall profit at the expense of investors. Authoring false legal opinions that facilitate the trading of unregistered securities presents a substantial risk to public investors, and the Commission has repeatedly sanctioned attorneys for

writing such opinion letters.[23] It is especially critical to continue to send a strong message to the bar that there will be serious consequences for issuing baseless legal opinions that allow schemers to flood the market with shares of a security that should have been registered or restricted. *See Ralston Purina*, 346 U.S. at 124 (registration requirement "protect[s] investors by promoting full disclosure of information thought necessary to informed investment decisions").

Attorneys like Dalmy play "a unique and pivotal role in the effective implementation of the securities laws." *Spectrum, Ltd.*, 489 F.2d at 541-42. "[T]he

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[23] *See Brian Dvorak*, Exchange Act Release No. 65446 (Sept. 30, 2011) (permanently suspending attorney who violated Section 5 by writing 440 opinion letters falsely claiming that stocks were exempt from registration, noting his actions were crucial to " the overall scheme to sell unregistered securities"); *Michael S. Krome*, Exchange Act Release No. 65799 (Nov. 21, 2011) (permanently suspending attorney who had been enjoined from violations of Sections 5 and 17 of the Securities Act, and of Section 10(b) of the Exchange Act, who had "issued a fraudulent opinion letter to enable [defendants] to have the restrictive legend removed from" stock certificate"); *Cameron Linton*, Exchange Act Release No. 67912 (Sept. 21, 2012) (permanently suspending attorney who Commission alleged had enabled the purchase and subsequent sale of penny stock when he "issued baseless legal opinions stating . . . the transactions were exempt from the registration requirement of Section 5"); *Brian Reiss*, Exchange Act Release No. 72335 (June 5, 2014) (permanently suspending attorney who wrote opinion letters containing false and misleading statements, without making a reasonable inquiry into the underlying facts, which caused transfer actions to remove restrictive legends on stock certificates); *Stephen G. Bennett*, Exchange Act Release No. 68592 (Jan. 4, 2013) (permanently suspending attorney who provided false stock tradability opinion letters); *Virginia Sourlis*, Exchange Act Release No. 70031 (July 23, 2013) (suspending for five years attorney who aided and abetted violations of Section 10(b) and Rule 10b-5 by issuing a false opinion letter that facilitated an illegal public offering); *Albert J. Rasch, Jr.*, Exchange Act Release No. 60557 (Aug. 21, 2009) (suspending for five years attorney who issued opinion letters that "contained false and misleading statements of material fact, cited to nonexistent documents, and concluded without basis that more than 20 million shares acquired in unregistered offerings and bearing restrictive legends could be sold into the public market absent registration pursuant to Securities Act Rule 144.").

smooth functioning of the securities markets will be seriously disturbed if the public cannot rely on the expertise proffered by an attorney when he renders an opinion on such matters." *Id.* at 542. Purchasers of Zenergy stock, and the public markets more generally, plainly could not rely on the expertise proffered by Dalmy, despite her 30 years of experience in the field.

CONCLUSION

Based on the foregoing, the SEC's Office of Litigation and Administrative Practice ("OLAP") respectfully requests that the Commission disqualify Dalmy from appearing or practicing before it for a substantial period.

Dated: April 8, 2016

Respectfully submitted,

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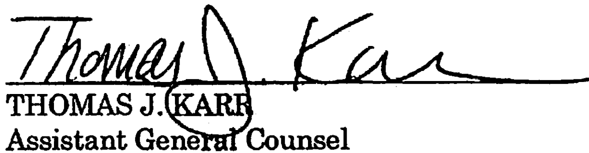

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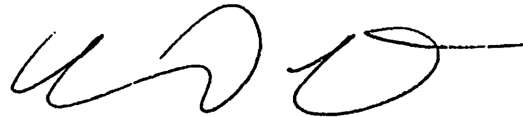
CERTIFICATE OF COMPLIANCE

I hereby certify that, according to Microsoft Word, the foregoing **Motion For Summary Disposition And For An Order Disqualifying Dalmy From Appearing And Practicing Before The Commission, Including Statement Of Points And Authorities** has 9,553 words (excluding the cover page; Tables of Contents, Authorities and Exhibits; Certificates of Compliance and Service; and attachments).



April 8, 2016

Eric A. Reicher

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Motion For Summary Disposition And For An Order Disqualifying Dalmy From Appearing And Practicing Before The Commission, Including Statement Of Points And Authorities** was served on each of the following on April 8, 2016, in the manner indicated below:

By Hand
Brent J. Fields
Secretary of the Commission
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-2557

By Hand and By E-mail
The Honorable Brenda P. Murray
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
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Eric A. Reicher

EXHIBIT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ZENERGY INTERNATIONAL, INC., BOSKO R. GASICH, ROBERT J. LUITEN, SCOTT H. WILDING, SKYLINE CAPITAL, INC., RONALD MARTINO, and DIANE D. DALMY, Defendants, and MARKET IDEAS, INC., Relief Defendant.	Civil Action No. **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff, the United States Securities and Exchange Commission ("SEC"), alleges as follows:

NATURE OF THE ACTION

1. This matter involves a pump-and-dump scheme orchestrated by Defendant Bosko R. Gasich ("Gasich"), one of the founders and principal shareholders of Defendant Zenergy International, Inc. ("Zenergy"). Zenergy is a company headquartered in Chicago, Illinois that purported to be in the business of selling and producing biofuels. Zenergy's stock is quoted on the over-the-counter market.

2. In June 2009, Gasich caused Zenergy to enter into a reverse merger with Paradigm Tactical Products, Inc. ("Paradigm"), a publicly traded shell entity. Shortly before the merger, Gasich prepared a backdated convertible note for a $30,000 debt purportedly owed to him by Zenergy. Paradigm agreed to assume this debt and to issue shares of its common stock to settle the debt as partial consideration for the reverse merger.

3. Gasich then assigned this purported debt to his family and friends, Nenad Jovanovich ("Jovanovich"), Kymberly A. Nelson ("Nelson"), Javorka L. Gasic ("J. Gasic"), and Diana Bozovic ("Bozovic"); stock promoters, including Defendant Scott H. Wilding ("Wilding"); associates of Paradigm; and counsel, Defendant Diane D. Dalmy ("Dalmy"); and caused Paradigm to issue 300 million shares of purportedly unrestricted stock to these assignees.

4. Dalmy, who served as transaction counsel for the reverse merger and sold shares herself, issued opinion letters to transfer agents and others that improperly concluded that these shares were unrestricted and could be sold immediately.

5. Thereafter, Gasich and the promoters conducted two promotional campaigns to generate investor interest in Zenergy. The campaigns used misleading press releases and financial disclosures reviewed and approved by Gasich and Zenergy's Chief Executive Officer, Defendant Robert J. Luiten ("Luiten"), and touts by individuals who failed to disclose the compensation received for promoting Zenergy stock, including Dale J. Baeten ("Baeten"), Charles C. Bennett ("Bennett"), George E. Bowker, III ("Bowker"), and Defendant Ronald Martino ("Martino"). The promotional activity induced members of the investing public to buy Zenergy stock and increased Zenergy's share price.

6. Gasich, his assignees, and their associates then sold their shares into the public market for illicit trading profits totaling at least $4.4 million.

JURISDICTION AND VENUE

7. The Commission brings this action pursuant to Section 20(b) and 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77t(b)] and Sections 21(d) and 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)].

8. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and 28 U.S.C. § 1331.

9. Venue is proper in this Court pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Acts, practices, and courses of business constituting violations alleged herein have occurred within the jurisdiction of the United States District Court for the Northern District of Illinois and elsewhere. Moreover, certain defendants reside or transact business in this district.

10. Defendants, directly and indirectly, have made use of the means and instrumentalities of interstate commerce and of the mails in connection with the acts, practices, and courses of business alleged herein.

DEFENDANTS

Issuer and Affiliates

11. **Zenergy International, Inc.** was incorporated in Nevada on July 31, 2006 and identifies Chicago, Illinois as its headquarters. Zenergy purported to be in the business of selling and producing biofuels. Zenergy was formed by Luiten, Gasich, and Gasich's now-deceased business partner ("Gasich's Partner"). In June 2009, Zenergy combined with a shell entity, Paradigm Tactical Products, Inc., which was quoted on OTC Link (formerly, the Pink Sheets) operated by the OTC Markets Group, Inc. ("OTC Markets") and purportedly sold handheld metal detectors to law enforcement and security companies. From its inception to the present,

Zenergy has not had any significant operations or assets. Currently, Zenergy is not operational, and its corporate registration has been revoked. Neither Zenergy nor its securities are or were registered with the Commission in any capacity.

12. **Bosko R. Gasich**, age ■, resides in Chicago, Illinois. Gasich was a founder and principal shareholder of Zenergy. Gasich also acted through Lone Star Strategic Partners, LLC ("Lone Star"), Market Ideas, Inc., The Spire Group, LLC ("Spire Group"), Karma Group Holdings, LLC, and Vertical Group Holdings, LLC ("Vertical Group"), which were owned or controlled by him. From 1991 to 2000, Gasich was a registered representative, successively associated with four registered broker-dealers. Gasich held Series 7 and Series 63 licenses. Through his firm, Market Ideas, Gasich has been involved with several other penny stock companies, assisting with reverse mergers, unregistered financings, and investor relations.

13. **Robert J. Luiten**, age ■, resides in Mobile, Alabama. Luiten was a founder and principal owner of Zenergy and, from July 31, 2006 through at least 2010, its Chief Executive Officer ("CEO"), Chairman of the Board, and sole director.

Promoters and Touters

14. **Scott H. Wilding**, age ■, resides in Pembroke Pines, Florida. Wilding was a stock promoter and acted as an intermediary between companies seeking to raise capital and shell entities. On February 17, 2004, the Commission ordered Wilding to cease and desist from violating Sections 5(a) and (c) of the Securities Act.

15. **Skyline Capital, Inc.** ("Skyline Capital") was incorporated by Wilding in Florida on January 8, 2004 and is based in Pembroke Pines, Florida. Wilding formed Skyline Capital a month prior to the cease-and-desist order issued against him in February 2004.

16. **Ronald Martino**, age ■, resides in Cranston, Rhode Island.

Counsel

17. **Diane D. Dalmy**, age █, resides in Denver, Colorado. Dalmy served as counsel for the reverse merger and issued opinion letters that improperly concluded that her shares and the shares of many of the above individuals and entities were unrestricted and freely tradable. She has served as counsel to multiple microcap issuers. On September 24, 2009, OTC Markets placed Dalmy on its prohibited attorney list.

Relief Defendant

18. **Market Ideas, Inc.** ("Market Ideas"), based in Chicago, Illinois, was incorporated by Gasich, its sole owner, in Delaware on June 1, 2005.

FACTS

Formation of Zenergy and Pre-Merger Activity

19. From its formation in July 2006 to the time of the reverse merger with Paradigm in June 2009, Zenergy purported to operate as a biofuel production and trading company.

20. Zenergy was founded by Gasich, Gasich's Partner, and Luiten. Luiten, a former biofuels executive, was Zenergy's Chairman and CEO and managed its day-to-day operations. However, Gasich and Gasich's Partner participated in the management of Zenergy as controlling shareholders and pursuant to consulting agreements.

21. Although Luiten possessed authority over Zenergy as the CEO and Chairman of the Board, he shared control of the entity with Gasich. After Gasich's Partner passed away, Luiten and Gasich, who were the original founders and principals of Zenergy, were the only two individuals operating Zenergy. Zenergy did not hold formal board meetings or observe other corporate formalities. Instead, Luiten and Gasich informally shared decision-making.

22. Zenergy had no revenue or income, nor any assets of consequence. It initially was financed through capital contributions by Gasich and Gasich's Partner in 2006 and

convertible debt from a handful of other investors during 2007 and 2008. The vast majority of these funds were used to pay Luiten's salary and Gasich and Gasich's Partner's consulting fees.

23. Zenergy unsuccessfully attempted to raise capital through bank loans and, from December 2006 through February 2008, through a failed offering pursuant to Regulation A under the Securities Act [17 C.F.R. § 230.251].

The Paradigm Reverse Merger

24. In late 2008, Zenergy resolved to combine with a publicly traded shell entity to access publicly traded stock. In early 2009, Gasich identified Paradigm for this purpose.

25. At the time, Paradigm purported to be in the unrelated business of selling handheld metal detectors and had no operations or assets. For years, Paradigm's shares, which were quoted on OTC Link, were thinly traded at a price well below a penny per share.

26. Zenergy and Paradigm entered into a memorandum of understanding regarding a potential share exchange transaction on March 31, 2009. Gasich negotiated the transaction on behalf of Zenergy, and Wilding negotiated on behalf of Paradigm. The initial agreement was approved by Luiten, a former owner and officer of Paradigm ("Paradigm Associate A"), and the CEO of Paradigm ("Paradigm Associate B"). Dalmy served as transaction counsel for the reverse merger.

27. In her capacity as transaction counsel, Dalmy supplied the documents and legal structure necessary to consummate the merger and allow Zenergy access to publicly traded shares.

28. In connection with this process, she received emails prior to the transaction from Gasich, Wilding, and others reflecting the need to obtain convertible debt necessary to convey freely trading shares to the transaction participants, referring to control over the float, and alluding to an impending distribution of shares.

29. Dalmy also knew that Wilding, a promoter who was subject to a Commission cease-and-desist order for his prior participation in unregistered offerings, was significantly involved in the negotiation of the reverse merger.

30. Immediately prior to the transaction, with Dalmy's assistance, Paradigm Associate B issued himself a control block of approximately 400 million shares so that Paradigm could obtain shareholder approval for the reverse merger. Paradigm Associate B then executed various documents, which were prepared by Dalmy, to approve the transaction on behalf of Paradigm.

31. On or about May 28, 2009, Zenergy and Paradigm entered into a share exchange agreement, pursuant to which Zenergy would be merged into Paradigm. Each company approved the share exchange agreement on or about June 8 and 9, 2009.

32. Through this "reverse merger," Zenergy's shareholders assumed control of Paradigm. After reducing the number of its outstanding shares from 1.5 billion to 20 million through a reverse stock split, on June 12, 2009, Paradigm issued seven new Paradigm shares to existing Zenergy holders for each share of Zenergy held by them. In the aggregate, Zenergy shareholders received 216,232,100 restricted shares and a 91.5 percent stake in Paradigm. Based on their holdings in Zenergy at the time, Luiten, Gasich's Partner's widow, and Gasich, through the Spire Group, received almost all of these shares. Luiten, Gasich's Partner's widow, and Gasich each held 28 percent of the combined entity.

33. Shortly after the transaction, in July 2009, Paradigm was renamed Zenergy, and the Paradigm ticker symbol ("PDGT") was replaced with the Zenergy symbol ("ZENG").

The Gasich Assignment

34. In connection with the reverse merger, Gasich, together with Wilding and Paradigm Associates A and B, planned to distribute 300 million shares of purportedly

unrestricted stock to family and friends of Gasich, promoters and touters, and associates of Paradigm.

35. As partial consideration for the merger, Paradigm would assume $30,000 of convertible debt purportedly owed by Zenergy.

36. Gasich then would assign portions of the debt to be converted by the assignees into shares to be sold in connection with a promotional campaign.

37. To effectuate the distribution of these shares, Gasich prepared a backdated convertible note. On May 17, 2009, pursuant to Gasich's request, Dalmy sent Gasich a template for a "standard convertible note." On May 26, 2009, Gasich sent Luiten, for Luiten's signature, a note dated April 17, 2008 that tracked Dalmy's template. Gasich returned an executed note that followed Dalmy's template to Dalmy on May 27, 2009. The underlying "debt" never existed. Moreover, Gasich did not provide any consideration to obtain the convertible feature.

38. The note's stated conversion rate, which differed from all other convertible notes issued by Zenergy, permitted the conversion of the purported debt into 300 million shares.

39. Days after the share exchange agreement was signed, Gasich assigned portions of the convertible debt to his family and friends, promoters, associates of Paradigm, and Dalmy, all of whom immediately exercised the option to convert the debt into shares of Paradigm stock.

40. From June 19 to 23, 2009, Paradigm, Zenergy's predecessor entity, issued 300 million shares to Gasich's assignees in the following manner:

(a) Paradigm issued 196 million shares to Gasich's family and friends, including: Jovanovich, a close friend and college roommate, to raise capital for Zenergy; Nelson, Gasich's then-fiancée, to hold and sell on Gasich's behalf; J. Gasic, his sister, to compensate owners of a company to be

acquired by Zenergy after the reverse merger; and Bozovic, Gasich's niece, to finance touting activity and to transfer to Nelson (on Gasich's behalf). Although the assignments to friends and family purportedly were based on consulting services, none of these assignees provided any significant services to Zenergy, and all acted as nominees for Gasich. Combining these 196 million shares with his own holdings, Gasich effectively controlled 49 percent of the 536 million shares outstanding.

(b) Paradigm also issued 38 million shares to Wilding (through Skyline Capital), who would coordinate and finance Zenergy's promotional activity and transfer Zenergy stock to touters. Wilding purportedly received his shares as consideration for negotiating the merger and to satisfy alleged debts owed to him by Paradigm before the merger. Paradigm issued an additional 10 million shares to another individual (through one of his entities) who would promote Zenergy through a website controlled by him ("Website Owner").

(c) Fifty-two million shares were issued to former associates of Paradigm. Paradigm Associate A's entity (which was nominally controlled by Paradigm Associate C) and Paradigm Associate B (in part through his personal entity) each received 26 million shares.

(d) Dalmy received 4 million shares as counsel for the transaction.

41. After the Gasich assignment, Gasich and several of his assignees (including Paradigm Associates A and B, Jovanovich, and Nelson) opened personal and corporate accounts

with the same broker-dealer, where they deposited the shares received through the assignment. Most of these individuals began selling shares immediately.

42. The heaviest sale volume by this group occurred in connection with the promotional activity that peaked in August 2009, which is described below.

43. In September 2009, after the broker-dealer's clearing firm refused to continue clearing trades in Zenergy, these individuals moved their accounts to other broker-dealers and, together with other Gasich assignees and their transferees, continued to sell through a second promotional wave that began in September 2009 and crested in December 2009.

44. Over both time periods, the assignees and their immediate transferees amassed at least $4.4 million in trading profits.

Promotional Activity

45. Gasich orchestrated a promotional campaign to inflate the price of Zenergy stock that combined false and misleading disclosures with touting activity.

46. The promotional activity can be divided into two phases: (1) from April 2009 to September 2009 and (2) from September 2009 to December 2009.

Promotional Activity from April 2009 to September 2009

47. From June 2009 to August 2009, Zenergy and Paradigm issued a number of press releases designed to generate interest in Zenergy securities.

48. These press releases were initiated by Gasich, who reviewed, edited, approved, and distributed them. Luitcn also reviewed and approved all or nearly all of the press releases.

49. In several of these press releases, Zenergy, Gasich, and Luiten misrepresented or omitted material facts about Zenergy's assets and operations and the reverse merger.

Press Releases Issued in June 2009

50. Zenergy, under its former name, Paradigm, issued two misleading releases about the reverse merger in June 2009.

51. On June 5, 2009, Paradigm announced that it was finalizing a definitive agreement to acquire an unidentified "rapidly emerging" biofuel company.

52. On June 23, 2009, Paradigm announced the completion of a reverse merger with Zenergy and the appointment of Luiten as CEO. According to the June 23, 2009 release, Zenergy was an "innovative biofuel solutions provider positioned to effectively capitalize on the emerging biofuels market while simultaneously bringing the opportunity to the public for participation in strong potential corporate growth."

53. These two releases failed to disclose that Zenergy's operations and assets were nonexistent.

54. Neither press release disclosed the material terms of the reverse merger, the Gasich assignment, or the related share issuances.

55. Zenergy and Paradigm also failed to disclose in the press releases that the agreement between Paradigm and Zenergy included, among other things, Paradigm's assumption of $30,000 of convertible debt purportedly owed by Zenergy to Gasich. The releases also misleadingly omitted the assignment of convertible debt to Gasich's family and friends, promoters and touters, Paradigm's associates, and counsel to distribute 300 million shares to the investing public.

56. The omissions were material because they concealed from investors significant aspects of the transaction and the existence of an impending distribution and promotion of Zenergy's stock.

57. Moreover, the releases were materially false and misleading because Paradigm and Zenergy already had executed the share exchange agreement at least one week before the June 5, 2009 announcement.

58. The omitted facts regarding the lack of operations and assets, the material terms of the reverse merger, the Gasich assignment, and the related share issuances were material because reasonable investors would have considered them important to the evaluation of an investment in Zenergy.

59. By delaying the reporting of the transaction, Gasich gained additional time to organize promotional activity and the sale of shares into the market. In addition, because the June 5, 2009 press release inaccurately described the agreement as indefinite, when in fact an agreement had been reached, Zenergy was able to issue multiple releases concerning the transaction, in a manner designed to inflate interest in Zenergy's securities artificially.

60. Zenergy, Gasich, and Luiten knew or were reckless in not knowing that these statements and omissions in the June 2009 press releases were materially false and misleading when made. Among other things, both Gasich and Luiten knew about the material terms of the share exchange agreement and reverse merger, the impending distribution of shares to the public, and Zenergy's lack of operations and assets. At the time of the press releases, Gasich also knew about the coming promotion of Zenergy stock for which he organized the promotional activity.

Press Releases Issued in August 2009

61. Zenergy issued additional press releases designed to inflate Zenergy's share price in August 2009.

62. On August 3, 2009, Zenergy announced the changing of the corporate name to Zenergy and its intention to reduce authorized shares from 1.5 billion to 700 million.

63. On August 11, 2009, Zenergy announced the share reduction, representing that the restructuring would permit Zenergy to begin negotiating with possible acquisition candidates and joint ventures.

64. Although technically accurate, the August 3 and 11, 2009 releases were issued primarily to attract attention to Zenergy and fuel speculation of merger and acquisition activity.

65. On August 7, 2009, Zenergy announced that a purported recognized authority on green technologies had been appointed to its Board of Advisors.

66. However, the August 7, 2009 press release failed to disclose that the Board of Advisors was a board of one or that this individual had been involved with Zenergy since its formation, a fact known to both Gasich and Luiten. This press release falsely gave investors the appearance that the company actually maintained a functioning board of advisors, when in fact it did not.

67. Based on his role in organizing the promotional activity, Gasich understood that the August 2009 press releases were being issued in conjunction with a promotion of Zenergy's stock to generate artificial interest in Zenergy's stock.

68. Luiten knew or was reckless in not knowing that the August 2009 press releases were designed to inflate Zenergy's share price because, among other things, several releases were issued in rapid succession around the time of the reverse merger and repeated previously issued disclosures or dated information.

Coordinated Touting Activity

69. During the period that Zenergy issued these press releases, Gasich and Wilding coordinated a promotional campaign through touters.

70. While the reverse merger was being negotiated and consummated in May 2009, Wilding retained Baeten, Bennett, and Website Owner to tout Zenergy securities following the

merger. On or about July 8, 2009, Wilding hired and promised compensation of 1 million shares to another touter, Bowker. Although Wilding failed to deliver these shares, Wilding sent $8,000 to Bowker on August 1 and 6, 2009. On August 7, 2009, Wilding transferred a total of 11 million shares to compensate Baeten (3 million), Bennett (2 million), and Website Owner (6 million) for touting Zenergy. On August 30, 2009, Wilding transferred $15,000 to a fifth touter, Martino.

71. Baeten, Bennett, Bowker, Martino, and Website Owner touted Zenergy without disclosing their actual or expected compensation.

72. Further, Baeten, Bennett, and Website Owner sold shares received from Wilding during the period that they were promoting Zenergy.

73. Gasich and Wilding guided the touting activity, directing the transmission of email, message board posts, and Twitter messages to the public in a coordinated manner and supplying information for the promotional activity.

74. For instance, on May 12, 2009, Wilding instructed Bennett to "post your f***ing a** off when the time comes."

75. Personally and through his entities, Investing in Stock Market, Inc. and Midwest Stock Consulting, Inc., Baeten began promoting Zenergy stock on message boards and through his email newsletter in June 2009. For example, on July 31, 2009, Baeten emailed his listserves that "ZENG, formerly PTPC, [is] just getting started; next week is going to be so much fun."

76. From June through December 2009, Bennett posted comments about Zenergy on message boards, and served as moderator for the Zenergy message board on a public investor website, and Bowker acted similarly. For instance, on July 11, 2009, Bowker publicly traded messages with Bennett, writing that he was "just very confident this is monster, in the right

sector, with the right team." On July 27, 2009, Bowker published a statement on a public investor website that "I truly believe we have a gem here. I have a feeling Zenergy will be one of those stocks you look at that's 20 cents, and [you] wish you got in when it was 3 cents."

77. On August 4 and 5, 2009, Gasich, Wilding, and Website Owner coordinated Twitter, web, and email promotion of Zenergy in conjunction with the issuance of the August 3 and August 11, 2009 press releases. On August 4, 2009, Wilding emailed Bowker that Website Owner's promotion would occur that weekend. In response, Bowker replied "good, I've been pumping this for 5 weeks now."

78. On August 8, 2009, Zenergy's stock was promoted on Website Owner's website, and on August 13, 2009, Zenergy was the subject of an investment report that repeated the information previously released by Zenergy.

79. The first phase of promotional activity peaked in early August 2009.

80. As a result of the first wave of promotional activity and press releases, Zenergy's share price increased dramatically. Prior to June 2009, Paradigm stock was trading at less than a penny per share on minimal volume. After rising to $0.06 per share the day after the merger announcement, Paradigm's stock price fell to $0.02 per share by July 22, 2009. As a result of the promotional activity in August 2009, Zenergy's stock price (following the substitution of Zenergy's ticker symbol for Paradigm's symbol) again began to climb from this low point to its peak of $0.10 per share on August 10, 2009 on volume of 23 million shares.

Promotional Activity from September 2009 to December 2009

81. In early September 2009, OTC Markets (formerly Pink OTC Markets Group, Inc.) identified Zenergy's securities with a caveat emptor label and blocked quotations of Zenergy until Zenergy submitted a disclosure statement containing information about its ownership, operations, and financial condition.

Postings to the OTC Markets Website

82. On or about September 15, 2009, Zenergy posted to the OTC Markets website an information and disclosure statement (the "Statement").

83. The Statement was drafted, reviewed, and approved by Luiten and Gasich.

84. Zenergy's Statement contained numerous misstatements and omissions.

85. Among other things, Zenergy failed to disclose material facts about the reverse merger, such as the issuance of shares to Zenergy stockholders, Gasich's assignment, and the issuance of shares to former associates of Paradigm.

86. By omitting these material terms, Zenergy concealed the distribution and promotion of Zenergy's stock. The omitted information would have been important to investors evaluating an investment in Zenergy securities.

87. Zenergy also misrepresented or omitted to disclose material information about the control of Zenergy.

(a) For example, Zenergy failed to identify Gasich, his affiliates, and his nominees as control persons in a section of the document purporting to identify all control persons.

(b) Similarly, in a section of the document purporting to list all beneficial owners of 5 percent or more, Zenergy failed to identify multiple individuals or entities holding that amount, including Jovanovich (9 percent), Nelson (9 percent), Bozovic (9 percent), Wilding (7 percent), and Paradigm Associate B (6 percent).

(c) Zenergy also failed to disclose that the Spire Group was controlled by Gasich or that Gasich controlled shares held by his family members, fiancée, and college friend.

(d) Zenergy falsely reported that "there [were] no relationships existing among and between the issuer's officers, directors, and shareholders."

88. Individually and collectively, the misleading statements and omissions relating to the control of Zenergy concealed from investors Gasich's control of the entity, a distribution of stock to a small number of associated individuals, and the participation of promoters.

89. Zenergy also misrepresented or omitted to disclose material information about the operations and assets of Zenergy.

(a) Zenergy represented that the company had five employees, when in reality Zenergy had no full-time employees.

(b) Zenergy identified an individual as the Chief Financial Officer, without specifying that this person had worked only as a part-time bookkeeper since early 2009.

(c) Further, Zenergy affirmatively disclaimed shell company status, even though both Paradigm and Zenergy lacked operations and assets other than cash.

(d) The Statement also did not include Zenergy's financial information, which would have reflected the lack of operating history and assets, as well as other information necessary for an evaluation of an investment in Zenergy.

90. Individually and collectively, these material misrepresentations and omissions about Zenergy's management and operations falsely presented Zenergy as an operating business enterprise and concealed from investors its lack of activity, operations, and assets.

91. Because the Statement did not contain any financial statements, OTC Markets refused to change or remove the caveat emptor label.

92. On or about October 21, 2009, Zenergy posted financial statements dated September 30, 2009 as a supplement to the Statement.

93. These financial statements were prepared and approved by Gasich and Luiten.

94. The financial statements contained several materially false statements and omissions.

95. Among other things, Zenergy inaccurately and falsely described a purported outside investment by a third party.

(a) The notes to the financial statements falsely stated that Zenergy had received $570,000 as a result of a direct investment from a third-party investor in exchange for 3.8 million shares.

(b) This purported "third party investment" was in reality a $550,000 transfer of funds from Gasich's college roommate, Jovanovich, generated by selling shares that Jovanovich received through the Gasich assignment.

(c) Jovanovich made this $550,000 transfer at Gasich's direction, and Jovanovich did not receive any shares in return. The remaining $20,000 was not an investment at all, but represented Gasich's supposed waiver of accrued consulting fees purportedly owed to him.

(d) Zenergy also inaccurately represented that it had 540,032,195 outstanding shares when, in fact, it had only 536,232,195—3.8 million shares less than stated. This overstatement created the illusion that the "third-party investor" paid $0.15 per share for the 3.8 million shares, which greatly exceeded the $0.03 market price.

96. A reasonable investor would have considered these facts and the true source and reason for the purported third-party investment significant to the decision to purchase or sell Zenergy securities. Investors also would have wanted to know that the shares were presented at an artificially high value.

97. Zenergy's financial statements also falsely listed two purported loans to Zenergy Peru and Zenergy Malaysia totaling $50,581 as assets. However, these "loans" reflected undocumented advances to consultants in those countries that Zenergy had no reason to believe would be repaid.

98. The presentation of these "loans" as assets concealed Zenergy's lack of operations and assets, and misleadingly presented Zenergy as a business with prospects when it had none.

99. Gasich, a substantial owner, control person, and purported consultant, and Luiten, the CEO and Chairman of Zenergy, knew or were reckless in not knowing that Zenergy's disclosures on the OTC Markets website were false and misleading. Both were intimately familiar with Zenergy's business and operations, and both participated in the transactions that were discussed in the misleading disclosures.

100. After the financial statements were posted on the OTC Markets website, OTC Markets removed the caveat emptor label and replaced it with a limited information legend.

Press Releases Issued from October to December 2009

101. With the removal of the caveat emptor label, Gasich and Luiten caused Zenergy to issue another series of press releases designed to inflate the price of Zenergy's stock.

102. These press releases were initiated, reviewed, edited, and distributed by Gasich and reviewed and approved by Luiten.

103. Several of these releases were false and misleading or designed to induce artificial interest in Zenergy's stock.

104. On October 20, 2009, Zenergy announced that it had been communicating with acquisition candidates and had retained a large law firm as merger and acquisition counsel.

105. Although technically accurate, the press release was designed to give the impression of merger and acquisition activity.

106. On October 29, 2009, Zenergy announced that it had acquired a biofuel producer that could producc 5 million gallons of biofuel per year ("Biofuel Company").

107. Contrary to these representations, the Biofuel Company's facility was not in production at the time; it had no feedstock, contracts, or revenue.

108. Reasonable investors would have considered the nonexistent state of the Biofuel Company's operations important to their evaluation of an investment in Zenergy securities. The lack of operations was particularly relevant to investors given that Zenergy owned no other facilities.

109. The October 29, 2009 press release also represented that the transaction would be funded internally, "as not to cause any dilution to shareholders."

110. Contrary to the representations in the press release, part of the consideration for the acquisition was the transfer of 48 million Zenergy shares from Gasich's sister, J. Gasic, to Biofuel Company stockholders, which caused shareholder dilution. Although the shares were previously issued, the shares had been placed into the hands of J. Gasic to hold until the acquisition. At that point, the shares were transferred to Biofuel Company shareholders who, after a six-month lockup period, would sell them into the public market.

111. The press release also failed to disclose Zenergy's assumption of a significant amount of debt in connection with the acquisition.

112. The press release misleadingly gave the impression that the acquisition would be financed through cash, rather than through this transfer of previously issued shares and the assumption of debt by Zenergy.

113. Reasonable investors would have considered the assumption of debt significant because, among other things, it materially altered Zenergy's liabilities and the claim on Zenergy's assets and affected the availability and use of Zenergy's cash flows.

114. Three weeks later, on November 17, 2009, Zenergy announced that it had purchased feedstock from two sources to continue operations at the Biofuel Company's facility.

115. However, Zenergy did not enter into any actual purchase orders until a month later, and those purchase orders were with a single supplier and related shipper, which absconded with Zenergy's deposits without supplying any feedstock.

116. The failure to obtain feedstock was critical to Zenergy's operational capacity, given that Zenergy could not operate the Biofuel Company without a supply of feedstock, had not developed any other supply source, and lacked the resources to purchase any other supply.

117. On December 4, 2009, Zenergy announced the completion of the Biofuel Company acquisition.

118. Like the prior press releases, this release failed to disclose that the Biofuel Company facility was not in production and had no feedstock, contracts, or revenue.

119. Gasich, a substantial owner, control person, and purported consultant, and Luiten, the CEO and Chairman of Zenergy, knew or were reckless in not knowing that the statements in the press releases published from October 2009 to December 2009 were false and misleading. Both were intimately familiar with Zenergy's business and operations, and both participated in the transactions that were discussed in the misleading disclosures. Given his role organizing

promotional activity, Gasich also understood that the press releases were issued in connection with a promotional campaign.

Coordinated Touting Activity

120. Gasich coordinated another wave of touting activity in connection with these press releases.

121. On September 7, 2009, Gasich notified Wilding that Zenergy was planning to file documents necessary to have the caveat emptor label removed by OTC Markets and sent Wilding a list of forthcoming press releases, several of which corresponded to the releases discussed above.

122. Gasich also notified the touters of the issuance of the disclosures and releases, in some cases highlighting information to be disseminated by the touters, including the footnote in the financial statements describing the purchase of 3.8 million shares at $0.15 per share. Baeten forwarded Gasich's email to Martino.

123. On October 20, 2009, Baeten wrote his email list subscribers that he was "pounding the table here on ZENG; this is double-digit bound imho [in my humble opinion] and chart looks great for breakout here."

124. On October 26 and 27, 2009, Gasich coordinated additional touting in connection with the October 29, 2009 press release.

125. On or about November 19, 2009, Bennett posted several statements about Zenergy stock on a public investor website, including the statement that "you will see a run in this stock, of that I have NO DOUBT. No matter what anyone says, this stock will move north in a good way."

126. Around this same time, on or about November 20, 2009, Baeten approached Website Owner about scheduling a conference call for Zenergy to coordinate additional promotion.

127. On November 30, 2009, Gasich directed his niece, Bozovic, to transfer 16 million shares of Zenergy to various touters—10 million shares to Website Owner and associated entities, 3 million shares to Baeten, and 3 million shares to Martino—and to enter into a purported internet marketing services agreement with Baeten. At Gasich's direction, Bozovic also transferred 30 million shares to Nelson for the benefit of Gasich.

128. On December 3, 2009, the day before the issuance of the press release announcing the completion of the Biofuel Company acquisition, Gasich emailed Baeten that he anticipated news from Zenergy that Friday and promotion on several websites, and asked Baeten to coordinate with Website Owner's website to profile Zenergy and send a Twitter alert over the weekend "to make [it] a huge week for everyone involved." Baeten then relayed Gasich's update to Website Owner. That same day, Bennett wrote that he foresaw "heavier than average volume . . . coming in December."

129. From December 4 to 7, 2009, various stock newsletters repeated the touts and hyped Zenergy.

130. On December 4, 2009, Baeten emailed his listserves that "ZENG on alert here looking strong expecting a move up on the charts Monday, should be a blast!!"

131. The next day, Martino posted that "[t]his news is super solid. The first move in ZENG should be up 200% to 300%." In a separate message that day, he wrote that Zenergy was an "easy double."

132. This second wave of promotional activity peaked in early December 2009.

133. Gasich complemented the second wave of promotional activity with purchase activity. On December 7, 2009, Gasich told Website Owner and Baeten that he and others working with him were "trying to support" the stock. Gasich later promised "buying coming in from Chicago to help," and, in response to concerns about pressure on the share price, assured participants that "ZENG or everyone close to ZENG [were] not sellers . . . if we sell, it's in strength and never push our deal down." In the weeks leading to the substantial increase in promotion, price, and volume in early December 2009, Gasich made or directed multiple purchases of Zenergy through accounts in the name of Lone Star; Nelson's entity, Sky's the Limit Consulting, LLC ("Sky's the Limit Consulting"); and Jovanovich's entity, Accelerated Innovations, LLC ("Accelerated Innovations") to support the price of Zenergy's stock.

134. Zenergy's share price increased again during this second wave of promotional activity. Following the peak of activity in August 2009, from August 11 through September 10, 2009, Zenergy's stock price descended to $0.02 share, remaining below that level until early October 2009. From October 1 to 20, 2009, Zenergy's share price increased from $0.015 to $0.025 per share. After returning to a price of $.015 per share in mid-November 2009, the price doubled on December 7, 2009 to $0.03 per share in response to the December promotional campaign.

135. After this second peak, Zenergy's share price declined again, falling below a penny per share on February 17, 2010.

Dalmy's Opinion Letters

136. Dalmy and all of the assignees other than Paradigm Associate B received shares that were designated as unrestricted as a result of inaccurate opinion letters submitted by Dalmy to Zenergy's transfer agent in June 2009.

137. Opinion letters submitted by Dalmy from August to December 2009 permitted the issuance of purportedly unrestricted shares to others involved in the distribution of Zenergy's stock to the public.

Opinion Letters Issued in June 2009

138. On June 15, 2009, Dalmy sent the transfer agent two opinion letters, one for the shares of Paradigm Associate B and one for the shares of the other assignees, including her own shares.

139. Both of Dalmy's opinion letters incorrectly represented that the shares being issued in connection with the Gasich assignment could be issued to and sold by the assignees without restriction pursuant to Rule 144 under the Securities Act.

140. Dalmy had no reliable evidence upon which to base her opinion, and several of her representations were contrary to the information in Zenergy's books and records.

141. Dalmy's opinion letters represented that the Gasich debt was reflected in the financial statements of Zenergy as of April 17, 2008, at which time Zenergy had "verbally agreed" that the debt could be convertible at Gasich's option into common stock of Zenergy at $0.0001 per share.

142. Dalmy's opinion letters also concluded that at April 17, 2008, the alleged date of the Gasich debt, full consideration was given and the shares were deemed fully paid and non-assessable.

143. However, no such debt was reflected in Zenergy's financial statements as of April 17, 2008.

144. Further, although Dalmy purportedly relied on the convertible note in making these representations, Dalmy knew or was reckless in not knowing that the note was not authentic, because, among other things: (1) neither the note nor the convertible debt was

referenced in Zenergy's pre–May 2009 records; (2) the note was provided to her shortly after she supplied Gasich with a template on May 17, 2009; (3) the note conformed to her template but bore an April 17, 2008 date; and (4) the note's material terms and conversion rate substantially differed from those in all other convertible notes issued by Zenergy from 2006 to 2008, which themselves were identical to each other.

145. Dalmy's opinion letters also incorrectly concluded that a one-year holding period for the stock issued pursuant to the Gasich "debt" began on April 17, 2008, the date of the alleged debt, and that the assignees were deemed to have held their shares in excess of one year from the date of April 17, 2008.

146. Dalmy also falsely and without any reasonable inquiry represented that all of the assignees other than Paradigm Associate B were not affiliates of Zenergy. In fact, through his direct and indirect ownership and management of Zenergy, Gasich directly, or indirectly through one or more intermediaries, controlled Zenergy. Other assignees directly or indirectly controlled, were controlled by, or were under common control with Zenergy or Gasich, or sold for the account of Gasich or Zenergy.

147. In addition, she falsely and without any reasonable inquiry represented that Zenergy was not a shell entity when Zenergy had no or nominal operations and no or nominal assets beyond cash.

148. Dalmy also falsely and without any reasonable inquiry opined that "the requirements of Rule 144(b) have been met" and that the sale of the shares issued to the assignees were "exempt from the registration requirements...under the exemption set forth in Rule 144(b)" and could be subsequently sold or transferred by the assignees free of any restrictions on transfer.

Opinion Letters Issued from August to December 2009

149. From August 2009 to December 2009, Dalmy issued additional opinion letters incorrectly representing that certain touters' shares and the shares of Paradigm Associate B could be sold without restriction pursuant to Rule 144.

150. Dalmy, who was dismissed as Zenergy's corporate counsel by August 13, 2009, represented herself in her opinion letters as "special counsel" to Zenergy.

151. Dalmy reiterated the baseless representations in her June 15, 2009 submissions in letters sent to transfer agents and broker-dealer firms regarding the shares of Baeten, Bennett, and Paradigm Associate B.

152. She continued to make these representations even after they were called into question by a lawyer for a broker-dealer who had received one of her opinion letters on July 1, 2009. The lawyer asked Dalmy whether the oral agreement to amend the debt was accompanied by any consideration and whether Dalmy had considered Gasich's affiliate status. Without obtaining any additional information regarding these issues, Dalmy continued to assert her original opinion.

153. Further, in the Baeten opinion letter, Dalmy represented that Baeten's shares were a gift from Wilding, even though she received a consulting services agreement between Baeten and Wilding's entity, through which Wilding agreed to compensate Baeten for promoting Paradigm stock.

154. Dalmy failed to conduct any reasonable inquiry to prepare her opinions.

Trading Activity

155. Aggregated over both time periods, the Gasich assignees and their transferees obtained total trading profits of at least $4.4 million from their sales of the assigned shares into the public market in the following manner:

Assignee	Transaction Dates	Number of Shares	Trading Profits
Jovanovich	July 2009-Mar. 2010	49 million	$1.3 million
Nelson	Aug. 2009-Dec. 2009	35 million	$0.8 million
Wilding	July 2009-Aug. 2009	27 million	$1.3 million
Website Owner	Sept. 2009-Dec. 2009	24 million	$0.5 million
Paradigm Associates A, B, and C	July 2009-July 2010	36 million	$0.5 million
Baeten	Mar. 2010	6 million	$40,751
Bennett	Dec. 2009	2 million	$28,486
Dalmy	Aug. 2009	1 million	$43,995

156. In addition, J. Gasic and Bozovic transferred the majority of shares assigned to them to Biofuel Company stockholders and to promoters, for which they received from Gasich payments totaling approximately $25,575, and $12,500, respectively.

157. No registration statement was filed or in effect for any of the transactions described below.

Gasich Associates

158. Gasich used Jovanovich, Nelson, J. Gasic, and Bozovic as third-party nominees and custodians for himself, directing them to hold and trade stock at his direction and, in several instances, transferring funds for his benefit.

159. Gasich, personally and through his entities, received at least $633,518 from the securities sales and transfers made by Jovanovich and Nelson.

Jovanovich

160. Personally and through his entity, Accelerated Innovations, Jovanovich acted as a third-party nominee and custodian for Gasich, holding and trading stock at Gasich's direction, permitting Gasich to trade in his accounts, and transferring funds to Gasich or for his benefit.

161. In total, Jovanovich generated $1,312,236 through his sales of Zenergy stock.

162. From July through September 2009, Jovanovich sold over 17 million shares for a total of $1,001,320.

163. Jovanovich began a second round of sales following Zenergy's posting of financial documents on the OTC Markets website in October 2009, generating profits of $310,916.

164. Jovanovich transferred most of the trading profits from these sales to Gasich or, at Gasich's direction, to Zenergy and others, retaining approximately $108,299 for personal use.

165. In August and September 2009, Jovanovich transferred a total of $347,618 in trading profits to Gasich's entity, Market Ideas.

166. On September 2, 2009, Jovanovich transferred $550,000 in trading profits to Zenergy.

167. In January 2010, Jovanovich wired $146,450 of trading profits to Market Ideas and, in April 2010, another $172,819 to Vertical Group, another entity controlled by Gasich.

Nelson

168. Personally and through her entity, Sky's the Limit Consulting, Nelson acted as a third-party nominee and custodian for Gasich, holding and trading Zenergy securities at Gasich's direction, permitting Gasich to trade in her personal and corporate accounts, and transferring funds to Gasich or for his benefit.

169. Until Nelson terminated her engagement to Gasich in December 2009, Gasich controlled the trading in her accounts and the resulting trading profits.

170. Through Nelson's accounts, Gasich sold over 35 million shares from August 10 to December 30, 2009 for total trading profits of $804,068.

171. Gasich initially sold shares through these accounts until November 2009, after which he purchased shares from November 17 to December 8, 2009 to support the stock price.

172. Gasich resumed selling shares through these accounts on December 7, 2009, when another wave of promotional activity increased Zenergy's share price and volume substantially.

173. From late 2009 to early 2010, Nelson transferred $150,000 of trading profits to Gasich.

174. Other trading profits were used for personal expenses benefitting both Gasich and Nelson.

175. On February 4, 2010, after breaking her engagement to Gasich, Nelson transferred the remaining 16.3 million shares and $410,396 in trading profits to new accounts not controlled by Gasich.

J. Gasic

176. J. Gasic acted as a third-party nominee and custodian for Gasich, holding and transferring shares of Zenergy at his direction, in exchange for payments from Gasich.

177. On or about September 29, 2009, Gasich, through Market Ideas, paid J. Gasic a total of approximately $25,575.

178. Thereafter, on or about November 9, 2009, J. Gasic transferred 48 million unrestricted shares to owners of Biofuel Company as partial consideration for Zenergy's acquisition.

179. After the expiration of a "leak-out agreement" prohibiting sales exceeding one sixth of their position for six months, four of the former owners of Biofuel Company subsequently sold 34.7 million of these shares from May 12, 2010 to July 15, 2010 for trading profits of $50,916.

180. The purpose of the leak-out agreement was not to ensure investment intent, but instead to prevent the flooding of shares into the marketplace. Other than the leak-out agreement, which only lasted for six months and permitted limited sales, neither Gasich nor J. Gasic took steps to assure that the former owners intended to hold the securities for investment purposes.

181. J. Gasic retained the remaining 1 million shares transferred to her from Gasich.

Bozovic

182. Bozovic also acted as a third-party nominee and custodian for Gasich, holding and transferring shares at his direction in exchange for payments from Gasich.

183. On October 2, 2009, Gasich, through Market Ideas, paid Bozovic $10,000, and on November 30, 2009, another $2,500.

184. On November 30, 2009, Bozovic transferred 46 million shares at Gasich's direction to touters and to Sky's the Limit Consulting.

185. In return, at least one of the touters signed an agreement with Bozovic promising to provide promotional services for Zenergy.

186. Bozovic retained the remaining 3 million shares that she had received from Gasich.

Promoters and Touters

187. Wilding, Website Owner, and touters retained by Wilding also profited from the increase in stock price caused by the promotion.

188. From July 6 to August 19, 2009, Wilding sold 26.6 million shares for a total of $1,331,365. After the first phase of promotional activity, in transactions during September and December 2009, Wilding traded 4 million shares for a net gain of $32,695.

189. From September 11 to 23, 2009, one of Website Owner's entities profited $286,518 from selling 16 million shares received from Gasich and Wilding in exchange for internet promotion. In addition, from December 4 to 10, 2009, the same Website Owner's entity obtained another $201,310 of trading profits by selling 8 million shares that it had received from Gasich's niece as part of a November 30, 2009 distribution of shares to touters.

190. On March 5 and 9, 2010, Baeten sold the 6 million shares he received from Wilding and Bozovic for total trading profits of $40,751.

191. From December 16 to 21, 2009, Bennett sold the 2 million shares he received from Wilding on August 7, 2009, generating $28,486 in trading profits.

192. Bowker and Martino did not sell shares in the same manner as the other touters because Wilding never transferred the promised shares to Bowker, and Martino could not clear the shares he received.

193. However, Bowker and Martino, along with Baeten and Bennett, bought and sold shares from the public during promotional activity in an attempt to profit from the price fluctuation, with varying degrees of success. Bowker traded 82,000 shares for a net gain of $1,216. Martino traded 1,024,420 shares for a net loss of $1,263. Baeten traded 1,865,199 shares for a net loss of $21,049. Bennett traded 1,688,326 shares for a net loss of $693.

Dalmy

194. Dalmy also profited from her sales of the assigned shares, which she received as compensation for her work on the reverse merger and for issuing the June 2009 opinion letters.

195. From August 12 to 18, 2009, Dalmy sold 1 million shares for a profit of $43,995.

196. Dalmy sold her shares at the apex of the price increase.

COUNT I

VIOLATIONS OF SECTIONS 5(a) AND (c) OF THE SECURITIES ACT [15 U.S.C. §§ 77e(a) and (c)] (Against Defendants Zenergy, Gasich, Wilding, Skyline Capital, and Dalmy)

197. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

198. By their conduct, Defendants Zenergy, Gasich, Wilding, Skyline Capital, and Dalmy directly or indirectly: (a) made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell, through the use or medium of a prospectus or otherwise, securities as to which no registration statement was in effect; (b) for the purpose of sale or delivery after sale, carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, securities as to which no registration statement was in effect; and (c) made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy, through the use or medium of a prospectus or otherwise, securities as to which no registration statement had been filed.

199. By reason of the foregoing, Defendants Zenergy, Gasich, Wilding, Skyline Capital, and Dalmy violated Sections 5(a) and (c) of the Securities Act [15 U.S.C. § 77e(a) and (c)].

200. By reason of the foregoing, Defendant Wilding violated a cease-and-desist order entered by the Commission pursuant to Section 8A of the Securities Act.

COUNT II

VIOLATIONS OF SECTION 17(a)(1) OF THE SECURITIES ACT [15 U.S.C. § 77q(a)(1)] (Against Defendants Zenergy and Gasich)

201. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

202. By engaging in the conduct described above, Defendants Zenergy and Gasich, in the offer and sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, employed devices, schemes, and artifices to defraud.

203. Defendants Zenergy and Gasich intentionally or recklessly engaged in the fraudulent conduct described above.

204. By reason of the foregoing, Defendants Zenergy and Gasich violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

COUNT III

VIOLATIONS OF SECTION 17(a)(2) OF THE SECURITIES ACT [15 U.S.C. § 77q(a)(2)] (Against Defendants Zenergy, Gasich, and Luiten)

205. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

206. By their conduct, Defendants Zenergy, Gasich, and Luiten, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce and by the use of the mails, directly or indirectly, obtained money or property by means of untrue statements of material fact or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

207. By reason of the foregoing, Defendants Zenergy, Gasich, and Luiten violated Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

COUNT IV

VIOLATIONS OF SECTION 17(a)(3) OF THE SECURITIES ACT
[15 U.S.C. § 77q(a)(3)]
(Against Defendants Zenergy and Gasich)

208. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

209. By engaging in the conduct described above, Defendants Zenergy and Gasich, in the offer and sale of securities, by the use of the means and instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

210. By reason of the foregoing, Defendants Zenergy and Gasich violated Section 17(a)(3) of the Securities Act [15 U.S.C. § 77q(a)(3)].

COUNT V

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT [15 U.S.C. § 78j(b)]
AND RULE 10b-5(a) THEREUNDER [17 C.F.R. § 240.10b-5]
(Against Defendants Zenergy and Gasich)

211. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

212. By their conduct, Defendants Zenergy and Gasich, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly, employed devices, schemes, and artifices to defraud.

213. Defendants Zenergy and Gasich intentionally or recklessly engaged in the fraudulent conduct described above.

214. By reason of the foregoing, Defendants Zenergy and Gasich violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) thereunder [17 C.F.R. § 240.10b-5].

COUNT VI

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT [15 U.S.C. § 78j(b)] AND RULE 10b-5(b) THEREUNDER [17 C.F.R. § 240.10b-5] (Against Defendants Zenergy, Gasich, and Luiten)

215. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

216. By their conduct, Defendants Zenergy, Gasich, and Luiten, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly, made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

217. Defendants Zenergy, Gasich, and Luiten made the untrue statements and omissions of material fact.

218. Defendants Zenergy, Gasich, and Luiten intentionally or recklessly engaged in the fraudulent conduct described above.

219. By reason of the foregoing, Defendants Zenergy, Gasich, and Luiten violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(b) thereunder [17 C.F.R. § 240.10b-5].

COUNT VII

VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT [15 U.S.C. § 78j(b)] AND RULE 10b-5(c) THEREUNDER [17 C.F.R. § 240.10b-5] (Against Defendants Zenergy and Gasich)

220. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

221. By their conduct, Defendants Zenergy and Gasich, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or by the use of the mails, directly or indirectly, engaged in transactions, practices, or courses of

business that operated or would operate as a fraud or deceit upon the purchasers of such securities.

222. Defendants Zenergy and Gasich intentionally or recklessly engaged in the fraudulent conduct described above.

223. By reason of the foregoing, Defendants Zenergy and Gasich violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(c) thereunder [17 C.F.R. § 240.10b-5].

COUNT VIII

AIDING AND ABETTING VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10B-5 THEREUNDER
[15 U.S.C. § 78t(e)]
(Against Defendants Gasich and Luiten)

224. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

225. As described above, Defendant Zenergy violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

226. By their conduct, Defendants Gasich and Luiten each provided substantial assistance to Defendant Zenergy in its unlawful conduct.

227. By their conduct, Defendants Gasich and Luiten acted knowingly or recklessly in aiding and abetting Zenergy's violations of Section 10(b) and Rule 10b-5.

228. By reason of the foregoing, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Gasich aided and abetted Zenergy's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

229. By reason of the foregoing, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Luiten aided and abetted Zenergy's violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

COUNT IX

CONTROL PERSON LIABILITY FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10B-5 THEREUNDER
[15 U.S.C. § 78t(a)]
(Against Defendants Gasich and Luiten)

230. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

231. As described above, Defendant Zenergy violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5].

232. Through their positions and by their conduct, Defendants Gasich and Luiten exercised general control over the operations of Zenergy.

233. Through their positions and by their conduct, Defendants Gasich and Luiten possessed the power or ability to control the specific transactions and activities upon which the Zenergy's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder are based, whether or not that power was exercised.

234. By reason of the foregoing, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Gasich is jointly and severally liable with, and to the same extent as, Zenergy for its violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

235. By reason of the foregoing, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], Luiten is jointly and severally liable with, and to the same extent as, Zenergy for its violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

COUNT X

VIOLATIONS OF SECTION 17(b) OF THE SECURITIES ACT
[15 U.S.C. § 77q(b)]
(Against Defendant Martino)

236. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

237. By their conduct, Defendant Martino used the means or instruments of interstate transportation, or communication in interstate commerce, or the mails, to publish or circulate communications which described securities for a consideration received or to be received, directly or indirectly from the issuers, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

238. By reason of the foregoing, Defendant Martino violated Section 17(b) of the Securities Act [15 U.S.C. § 77q(b)].

COUNT XI

RELIEF DEFENDANT

239. Paragraphs 1 through 196 are realleged and incorporated herein by reference.

240. Relief Defendant Market Ideas received or benefited from the registration violations and fraudulent conduct described above. These funds are the proceeds, or are traceable to the proceeds, of the unlawful activity alleged above.

241. Relief Defendant Market Ideas has no legitimate claim to these funds.

242. The Commission is entitled to an order requiring Relief Defendant Market Ideas to disgorge, jointly and severally with Gasich, the amount of proceeds received by it.

RELIEF REQUESTED

WHEREFORE, the SEC respectfully requests that this Court:

I.

Find that Defendants committed the violations alleged herein.

II.

Issue orders of permanent injunction restraining and enjoining Defendants Zenergy, Gasich, Wilding, Skyline Capital, and Dalmy, their agents, servants, employees, attorneys, and

all persons in active concert or participation with them, from violating Section 5 of the Securities Act [15 U.S.C. §§ 77e].

III.

Issue orders of permanent injunction restraining and enjoining Defendants Zenergy, Gasich, and Luiten, their agents, servants, employees, attorneys, and all persons in active concert or participation with them, from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

IV.

Issue orders of permanent injunction restraining and enjoining Defendant Martino, his agents, servants, employees, attorneys, and all persons in active concert or participation with them, from violating Scction 17(b) of the Securities Act [15 U.S.C. § 77q(b)].

V.

Order Defendants Zenergy, Gasich, Luiten, Wilding, Skyline Capital, Dalmy, Martino, and Market Ideas to pay disgorgement of ill-gotten gains, derived directly or indirectly from the misconduct alleged, together with prejudgment interest thereon. Given the close relationship between certain individuals and their alter ego entities in engaging in the misconduct—Gasich and Market Ideas, and Wilding and Skyline Capital—joint and several liability is appropriate as between those individuals and their respective entities.

VI.

Order Defendants Gasich, Luiten, Wilding, Skyline Capital, Dalmy, and Martino to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and, with respect to Gasich and Luiten, Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

VII.

Order Defendant Wilding to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] for violation of a cease-and-desist order entered by the Commission pursuant to Section 8A of the Securities Act.

VIII.

Pursuant to Section 20(g) of the Securities Act [15 U.S.C. § 77t(g)] and Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)], bar Defendants Zenergy, Gasich, Luiten, Wilding, Skyline Capital, Dalmy, and Martino, from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock.

IX.

Pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], prohibit Defendants Gasich and Luiten from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78*l*] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

X.

Retain jurisdiction of this action in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

XI.

Grant such other and further relief as the Court deems just and appropriate.

JURY DEMAND

The Commission hereby demands a trial by jury on all claims so triable pursuant to the Federal Rules of Civil Procedure.

Dated: August 1, 2013

Respectfully submitted,

s/ Daniel J. Hayes

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EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Case No. 13-cv-5511
v.	)	
	)	Judge Joan B. Gottschall
ZENERGY INTERNATIONAL, INC., *et al.*,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION & ORDER

This case is part of the fall-out of a penny-stock pump-and-dump scheme. In June 2009, defendant Bosko R. Gasich ("Gasich") and other individuals associated with Zenergy International, Inc. ("Zenergy") acquired the publicly traded stock of Paradigm Tactical Products, Inc. ("Paradigm") through a reverse-merger. In connection with the merger, Gasich assigned convertible debt securities that he had received from Zenergy to several of his friends, family members, and business associates, who subsequently converted the assigned securities into 300 million shares of Zenergy stock. Gasich and others then organized a campaign to promote Zenergy in press releases and over the Internet. Between June 2, 2009 and mid-August 2009, the price per share of Zenergy stock increased approximately tenfold. As the share price increased, Gasich's assignees sold their stock to unsuspecting investors. The assignees generated $4.4 million in profits.

On August 1, 2013, the SEC brought this action against Gasich, Zenergy, and other persons for alleged violations of federal securities laws. Now before the court is the SEC's

motion for partial summary judgment against defendant Diane D. Dalmy ("Dalmy") for her alleged violation of Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e ("Section 5"). Dalmy was one Gasich's assignees who sold shares of Zenergy stock. She was also the transaction attorney who advised the principals of Zenergy and Paradigm as they executed the reverse merger.

For the reasons set forth herein, the court agrees with the SEC that no genuine issue of fact exists as to Dalmy's liability under Section 5. The SEC's motion is therefore granted.

I. Facts[1]

A. Zenergy

Zenergy was incorporated as a purported biofuels company in July 2006. Its original founders were Gasich, defendant Robert J. Luiten ("Luiten"), and their now-deceased business partner, Martin McIntyre ("McIntyre"). Each individual owned one-third of Zenergy's stock, which equated to 10 million shares, respectively.

Zenergy was initially financed through capital contributions by Gasich and McIntyre. Gasich also loaned $30,000 to Zenergy in April 2008 in exchange for convertible debt securities, according to a promissory note that Gasich prepared. The convertible debt securities purportedly gave Gasich the right to convert $0.001 (par value of the stock) of debt into one share of Zenergy. If fully exercised, Gasich could convert the debt securities into 30 million Zenergy shares.

Through most of Zenergy's existence, Gasich, Luiten, and McIntyre all participated in managing the company either as officers or paid consultants. From July 2006 to 2010, Luiten served as Zenergy's Chief Executive Officer, Chairman of the Board, and sole director.

[1] Citations to the SEC's Local Rule 56.1 Statement of Facts are noted as "SEC SOF ¶ __."

Notwithstanding these formal titles, Luiten shared his responsibilities with Gasich and McIntyre. Gasich had access to Zenergy's bank accounts, and Zenergy's office address was a site that Gasich maintained. Moreover, Gasich consulted Zenergy through his company, Market Ideas, Inc. Gasich was the President, Chief Executive Officer, and sole shareholder of Market Ideas. In 2006, Market Ideas "provided capital investment and advisory services" in connection with the founding of Zenergy. (*See* SEC Ex. 7, Gasich Aff. ¶ 3). Thereafter Market Ideas advised Zenergy with respect to its "corporate development, deal negotiations, capital structure, locating and procuring key management, site procurement, and engaging institutional investors." (*Id.* ¶ 4).

B. McIntyre's Death

McIntyre died in June 2008. Although his widow inherited his stock, she did not assume his role in the company or otherwise participate in Zenergy's operation. Instead, Luiten and Gasich effectively co-managed the company.

C. Zenergy's Reverse Merger with Paradigm

Sometime between 2008 and early 2009, Gasich and Luiten decided to pursue external funding. Rather than appeal directly to investors, they looked for publicly traded shell companies to merge with Zenergy so that Zenergy could issue stock. Both the SEC and Zalmy refer to the type of transaction Gasich and Luiten desired as "a reverse merger." As stated on Zalmy's website,

> A reverse merger is a method by which an active privately-owned operating company goes public by completing a transaction with a public shell company, with the public company surviving the transaction but having issued a controlling share of the company's stock to the owners of the privately-owned operating company. The public shell company then typically changes its name to reflect the operating business of the privately-owned operating company. Most public

> companies that enter into reverse mergers are shell companies, which are companies that have no significant operations or assets.[2]

(SEC SOF ¶ 19).

On or about March 23, 2009, defendant Scott H. Wilding ("Wilding") and Gasich began discussing a reverse merger transaction between Zenergy and Paradigm.[3] Wilding had been marketing Paradigm, a supposed seller of handheld security devices, to companies seeking access to publicly traded shares.[4] During the SEC's investigation that preceded this suit, Wilding testified and explained the rationale for merging two companies with different businesses: "There is no rationale: one is a shell, there is nothing there, and one wanted to go public." (SEC SOF ¶ 22).

Wilding was not alone in understanding the purpose of the Zenergy-Paradigm reverse merger: other participants in the transaction also viewed Paradigm as a "shell" company that had the ability to issue public shares. Paradigm's Chief Executive Officer, Vincent Cammarata, admitted that Paradigm "had zero operating capital" at the time of its reverse merger with Zenergy. (SEC SOF ¶ 28). Gasich averred that his company, Market Ideas, "assisted Zenergy in locating" Paradigm as "a merger candidate" so that Zenergy could "becom[e] a public company"

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[2] Dalmy challenges the admissibility of the SEC's citation to her website for lack of authentication. The court notes that Dalmy's website, or at least a website advertising her legal services and identifying her email address, still displays this same explanation of a reverse merger that the SEC incorporated into its Statement of Facts. Regardless of the authenticity of the website, the court cites its explanation of a reverse merger solely for context.

[3] On February 17, 2004, Administrate Law Judge Brenda P. Murray ordered Wilding to cease and desist from violating Sections 5(a) and (c) of the Securities Act. *See In re Research Investment Group*, Securities Act Release No. 83871 (Feb. 17, 2004) (http://www.sec.gov/litigation-admin/33-8387.htm).

[4] Before conferring with Gasich, Wilding attempted to negotiate a reverse merger between Paradigm and Naturally Splendid Enterprises, Ltd., an alleged seller of nutritional supplements. Zalmy worked with Wilding on this transaction, which evidently failed to materialize.

via a reverse merger. (SEC Ex. 7, Gasich Aff. ¶ 5). Luiten also understood that Gasich had identified Paradigm as a shell company "for the purpose of entering a reverse merger." (SEC Ex. 3 ¶ 6). Dalmy testified that she first became involved in the deal in March 2009, after Wilding contacted her to obtain "legal services related to a reverse stock split. . . ." (Dalmy Ex. 6, Dalmy Dep. 35:1-8). She admits that she understood that Paradigm would deliver "zero" assets and liabilities at closing. (*See* SEC Ex. 30, Dalmy Dep. 145:1-8).

The transaction itself commenced on March 31, 2009, when Zenergy and Paradigm entered into a memorandum of understanding. The memorandum specified that Paradigm would "deliver at closing 0/0 assets/liabilities." (SEC SOF ¶ 32). Zenergy and Paradigm then entered into a Share Exchange Agreement on or about May 28, 2009. Pursuant to this agreement, which Dalmy prepared with Gasich's assistance, Zenergy was to merge into Paradigm to allow Zenergy's shareholders to gain control over Paradigm. Both companies approved the Share Exchange Agreement on or about June 8-9, 2015.

On or about June 12, 2009, Zenergy shareholders received 216,232,100 restricted shares pursuant to the Share Exchange Agreement. The shares gave Zenergy shareholders a 91.5% stake in Paradigm. Gasich, Luiten, and McIntyre's widow each received approximately 67 million shares, based on the interests they held in Zenergy before the reverse merger.[5]

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[5] Dalmy challenges the notion that Gasich received 67 million shares through the merger. She contends that those shares were technically issued to a company, The Spire Group, LLC ("Spire Group"), and that the SEC has failed to submit admissible evidence verifying that Gasich was the sole owner of the Spire Group. But Dalmy misses the point. Ultimately, the issue is whether Gasich exercised control over the shares that he directed to the Spire Group. *See infra* at 11-14. Two undisputed facts show that Gasich exercised complete control over those shares. First, Gasich himself stated that he was directing the shares to which he was entitled, based on his pre-merger ownership interest in Zenergy, to the Spire Group. On June 5, 2009, Gasich wrote an email to Luiten indicating that he "just had a call" with Dalmy "in terms of format" for the division of shares Zenergy would receive pursuant to the Share Exchange Agreement. *See* SEC Ex. 46. Gasich provided a "break down" of the distribution of the 216,232,100 shares in his

D. The Gasich Assignment

In connection with the reverse merger, Paradigm agreed to assume the $30,000 worth of convertible debt that Zenergy purportedly owed to Gasich. However, the value of the debt changed: rather than equal $0.001 per share, the conversion rate was revised to $0.0001 per share. The new conversion rate meant Gasich could convert his securities into 300 million shares of Zenergy stock instead of 30 million shares.

Gasich assigned portions of his debt securities to members of his family, his friends, associates of Paradigm, Dalmy, and others. The assignees subsequently converted their assigned debt into hundreds of millions of shares of stock. Dalmy received 4 million shares for her role as counsel for the reverse merger.

E. The Public Sale of Zenergy's Post-Merger Shares

From June 2009 to December 2009, Gasich, Wilding and others promoted Zenergy by issuing press releases and posting information on internet message boards. The following chart reflects the increase in share price and volume activity of Zenergy stock between January 2009 and July 2010.

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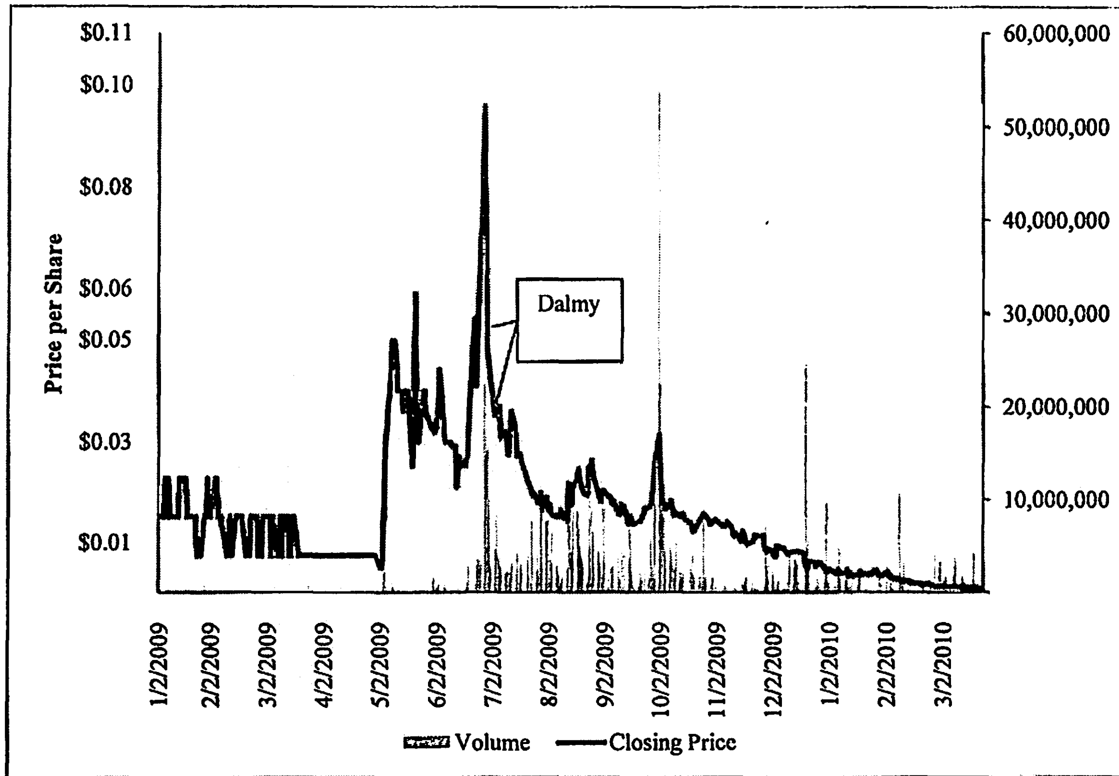
email to Luiten. *Id.* Although Gasich's name is not listed among the recipients of shares, he stated the following: "The Spire Group, LLC 66,663,331 shares (*converting my shares to corporation*)." *Id.* (emphasis added). Thus, the Spire Group served as a repository in which Gasich deposited the shares he was due. Second, even if there is no authenticated paperwork establishing Gasich's sole ownership of the Spire Group, Dalmy does not dispute that he was entitled to receive those shares before he transferred them to the Spire Group. It is undisputed that Gasich (a) held a one-third ownership interest in Zenergy before the merger, and (b) was due an amount of shares in the post-merger Zenergy proportionate to what his co-owners, Luiten and McIntyre's widow, obtained. Luiten and McIntyre both received approximately 67 million shares. Gasich was thus entitled to receive a similar amount. It is thus no coincidence that Gasich directed approximately 67 million shares to the Spire Group. That amount is what he owned. Thus, regardless of how Gasich used or transferred those shares, the upshot is he, alone, controlled their distribution.

Zenergy Share Price and Volume Activity (January 2009 to July 2010)



Gasich's assignees obtained at least $4.4 million from their sales. Dalmy deposited her 4 million Zenergy shares into her personal account at Scottrade on or about August 12, 2009. She then sent Scottrade one of her opinion letters, the convertible note, and other documents to show that her shares could be sold as unrestricted stock to the public. Between August 12 and August 18, 2009, she sold 1 million Zenergy shares to public investors for $43,995. She deposited the proceeds into her Scottrade account and subsequently used them for personal expenses.

F. Dalmy's Role in the Reverse Merger

Dalmy performed a variety of services as the transaction attorney for the reverse merger between Zenergy and Paradigm. She advised the parties regarding implementing the transaction

and prepared its essential documents, including the Share Exchange Agreement, board resolutions, and other corporate filings. Then, following the reverse merger, Dalmy prepared several opinion letters representing that the stock Gasich assigned to her and other assignees was exempt from the registration requirements of Section 5 of the Securities Act. It is undisputed that no registration statement was filed or in effect for any of sales of Zenergy shares that Gasich's assignees made, and that the shares were not exempt.

II. LEGAL STANDARD

Summary judgment is appropriate when the movant shows there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Smith v. Hope Sch.*, 560 F.3d 694, 699 (7th Cir. 2009). "[A] factual dispute is 'genuine' only if a reasonable jury could find for either party." *SMS Demag Aktiengesellschaft v. Material Scis. Corp.*, 565 F.3d 365, 368 (7th Cir. 2009). The court ruling on the motion construes all facts and makes all reasonable inferences in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Summary judgment is warranted when the nonmoving party cannot establish an essential element of its case on which it will bear the burden of proof at trial. *Kidwell v. Eisenhauer*, 679 F.3d 957, 964 (7th Cir. 2012).

III. DISCUSSION

"Section 5 of the Securities Act of 1933 requires a valid registration statement before securities are sold in or by means of interstate commerce. . . ." *United States v. Dokich*, 614 F.3d 314, 321 (7th Cir. 2010) (citing 15 U.S.C. § 77e). The SEC can establish a prima facie violation of Section 5 by showing that (1) the defendant directly or indirectly sold or offered to sell securities, (2) no registration statement was in effect or filed as to the securities involved, and (3) the offer or sale was made through the use of interstate facilities or the mails. *See S.E.C. v.*

Randy, 38 F. Supp. 2d 657, 667 (N.D. Ill. 1999) (citing *SEC v. Continental Tobacco Co.*, 463 F.2d 137, 155–56 (5th Cir.1972)). "A person not directly engaged in the transfer of the title of a security can be held liable if he has 'engaged in steps necessary to the distribution of [unregistered] security issues.'" *S.E.C. v. Greenstone Holdings, Inc.*, No. 10-cv-1302, 2012 WL 1038570, at *11 (S.D.N.Y. Mar. 28, 2012) (quoting *SEC v. Chinese Consol. Benevolent Ass'n, Inc.,* 120 F.2d 738, 741 (2d Cir.1941)). The defendant's "participation must be substantial, not *de minimis*," to be found liable as an indirect seller. *Greenstone Holdings*, 2012 WL 1038570, at *11.

Here, Dalmy does not dispute that she violated Section 5. She directly sold one million shares of Zenergy stock for $43,995. Nor does she contest the SEC's argument that she acted as an indirect seller in the sales of Zenergy stock by Gasich's assignees by virtue of the opinion letters she issued. *See Greenstone* Holdings, 2012 WL 1038570, at *11 ("As general counsel, Frohling wrote and approved opinion letters without which CST would not have issued any unregistered shares. Such conduct is sufficient to hold an attorney liable under Section 5."); *accord S.E.C. v. Gendarme Capital Corp.*, No. 11-cv-0053, 2012 WL 346457, at *4 (E.D. Cal. Jan. 31, 2012).

The sole disputed issue in this case is whether Dalmy and Gasich's other assignees' sales of Zenergy stock were exempt from the registration requirements of Section 5.[6] If no exemption applies to Dalmy's and the other assignees' sales of unregistered Zenergy securities, then Dalmy is liable under Section 5, and the SEC is entitled to partial summary judgment.

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[6] Dalmy argues that she sold her shares and issued her advisory opinions in good faith, but scienter is not an element of a violation of Section 5. *See SEC v. Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004) (per curiam). Dalmy's purported good faith belief that the Zenergy shares were exempt from registration is thus not a defense to liability under Section 5.

The only exemption that Dalmy invokes is Section 4(1) of the Securities Act, 15 U.S.C. § 77d(1) ("Section 4(1)"). Section 4(1) provides an exemption to the registration requirements of Section 5 "for transactions by any person other than an issuer, underwriter, or dealer." 15 U.S.C. § 77d(1)).[7] "The term 'issuer' means every person who issues or proposes to issue any security. . . ." 15 U.S.C. § 77b(a)(4). An "underwriter" is "any person who has purchased from an issuer with a view to . . . the distribution of any security." *Id.* § 77b(a)(11). And a "dealer" is "any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person." *Id.* § 77b(a)(12).

Here, the applicability of the term "underwriter" is at issue.[8] It is undisputed that Dalmy acquired her Zenergy stock from Gasich. The SEC asserts that Dalmy is ineligible for the Section 4(1) exemption because Gasich was an "underwriter" to the reverse merger. Dalmy agrees that if Gasich qualifies as an underwriter to Zenergy's distribution of unregistered securities, then his assignment of shares to her and her subsequent resale were not exempt from registration.

The General Rules and Regulations to the Securities Act of 1933 provide guidance for understanding the term, "underwriter," for the purpose of "determining whether or not the Section 4(1) exemption from registration is available for the sale of [unregistered] securities." *See* 17 C.F.R. § 230.144. This rule, referred to as "Rule 144," "creates a safe harbor from the Section 2(a)(11) definition of 'underwriter.'" *Id.* Essentially, if a person satisfies the criteria of

[7] Stated differently, stock sales by "issuers," "underwriters," and "dealers" *are* subject to the registration requirements of Section 5.

[8] The SEC does not contend that Gasich acted as an "issuer," as Paradigm (renamed Zenergy) issued the shares. Nor does the SEC claim that Gasich was a "dealer" when he assigned his shares.

the Rule 144 safe harbor, then that person "is deemed *not* to be engaged in a distribution of the securities and therefore not an underwriter of the securities for purposes of Section 2(a)(11)." *Id.* (emphasis added).

The critical inquiry here is whether Gasich satisfies all of the conditions of the Rule 144 safe harbor; if he does not, Dalmy acknowledges that the SEC must prevail in its Section 5 claim against her.

Both the SEC and Dalmy focus on two conditions under Rule 144. First, Rule 144 imposes a one-year holding period requirement. *See* § 230.144(d)(1)(ii). That is, a minimum of one year must elapse between the later of (1) the date of the acquisition of the securities from the issuer, *or from an affiliate of the issuer*, and (2) any resale of such securities. *Id.* (emphasis added). Second, the Rule 144 safe harbor is unavailable to securities issued by shell companies. § 230.144(i). A shell company is defined as an issuer "with no or nominal operations and no or nominal non-cash assets." *Id.*

The court first analyzes whether Dalmy's public sale of Zenergy stock was subject to the holding period requirement. If this requirement applied to Dalmy's sale of Zenergy shares, it is undisputed that she did not comply with it because she acquired her stock from Gasich in June 2009 and sold it to the public in August 2009.[9] The only question is whether Gasich was an "affiliate of the issuer," Zenergy. If he was, then the holding requirement applies, and Dalmy would be ineligible for the Rule 144 safe harbor and the Section 4(1) exemption.

Rule 144 defines an "affiliate of an issuer" as "a person that directly, or indirectly through one or more intermediaries, *controls*, or is controlled by, or is under common control

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[9] The same analysis applies to Gasich's other assignees. All of their resales took place less than a year before the one-year holding period expired. So, if Gasich qualifies as an affiliate of Zenergy, then Dalmy also violated Section 5 by serving as an indirect seller to the other assignees' sales.

with, such issuer." § 230.144(a)(1) (emphasis added). Although "Rule 144 fails to define 'control,' Rule 405 of Regulation C establishes a definition of 'affiliate' identical to that of Rule 144 and defines 'control' as 'the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting securities, by contract, or otherwise.'" *S.E.C. v. Kern*, 425 F.3d 143, 149 (2d Cir. 2005) (quoting § 230.405); *see also United States v. Corr*, 543 F.2d 1042, 1050 (2d Cir. 1976) (holding that control "depends upon the totality of the circumstances including an appraisal of the influence upon management and policies of a corporation by the person involved"). "A person may be in control even though he does not own a majority of the voting stock, and such control may rest with more than one person at the same time or from time to time. . . ." *Corr*, 543 F.2d at 1050 (citations omitted). "Although there is no bright-line rule declaring how much stock ownership constitutes 'control' and makes one an 'affiliate' under Section 4(1), some commentators have suggested that ownership of something between ten and twenty percent is enough, especially if other factors suggest actual control." *S.E.C. v. Cavanagh*, 445 F.3d 105, 114 n. 19 (2d Cir. 2006).

The undisputed facts in this case show that Gasich exerted sufficient control over Zenergy to qualify as an affiliate.[10] First, Gasich possessed the power to direct Zenergy's policies through his stock ownership and by contract. As was one of Zenergy's principal founders, he owned approximately 10 million shares of the company's outstanding stock, as did its other founders, Luiten and McIntyre. But Gasich owned something that Luiten and McIntyre did not: convertible debt securities. These securities gave Gasich the contractual power to

[10] Given the court's ruling that Dalmy failed to comply with the one-year holding requirement, it is unnecessary for the court to resolve whether Zenergy or Paradigm were shell companies as understood in the Rule 144 context.

convert the $30,000 he loaned to Zenergy into an additional 30 million shares of Zenergy stock, a conversion that would have given him a majority stake in the company before it merged with Paradigm.

After the merger, Gasich's ownership control increased. He, Luiten, and McIntyre's widow all received approximately 66 million shares in the post-merger Zenergy. These shares corresponded to the one-third interest each of them held in the company. In an email dated June 5, 2009, Gasich emailed Luiten with a "break down" of the 216,232,100 shares that Zenergy received through the reverse merger. *Id.* Although Gasich did not include himself among the list of recipients, he stated that he "convert[ed] [his] shares to [the] corporation," the Spire Group. The 66,663,331 shares Gasich "converted" to the Spire group roughly equaled the number of shares that his Zenergy co-founders, Luiten and McIntyre, received.[11]

Gasich subsequently received even more shares when he exercised his right to convert his debt securities. Gasich converted his $30,000 worth of debt securities into 300 million post-merger shares. He then assigned those shares to members of his family, his friends, associates of Paradigm, Dalmy, and others. If the shares Gasich held in the Spire Group are combined with the 300 million shares he assigned, Gasich controlled 366,663,331 out of the 536 million shares outstanding.

Additionally, separate from his ownership interests, Gasich possessed sufficient influence over Zenergy to confirm his status as an affiliate. Before the merger, Zenergy's CEO, Luiten, shared managerial responsibilities with Gasich. While both principals weighed in on the company's major strategic decisions, Gasich spearheaded its merger with Paradigm. Gasich's company, Market Ideas, "assisted Zenergy in locating" Paradigm as "a merger candidate" so that

[11] Luiten acquired 66,663,331 shares, and McIntyre's widow obtained 66,615,338 shares

Zenergy could go public. (SEC Ex. 7, Gasich Aff. ¶ 5). During the transaction, Dalmy's primary contacts were Wilding on behalf of Paradigm and Gasich on behalf of Zenergy. Dalmy acknowledges that Gasich assisted her in drafting the documents necessary to effectuate the transaction. In Dalmy's own words, "Gasich had significant involvement" in the negotiations on behalf of Zenergy. (*See* Dalmy's Resp. to SEC's SOF ¶ 46). Gasich and Luiten jointly approved the merger agreement and board resolutions on Zenergy's behalf. After executing the reverse merger, Gasich, Wilding and others promoted Zenergy by issuing press releases and by posting on internet message boards. Gasich thereafter controlled the distribution of approximately 366 million shares, or 68% of the total number of shares outstanding.

In sum, Gasich was an "affiliate" of Zenergy because Zenergy was under Gasich's control. Consequently, because of Gasich's affiliate status, Rule 144 required Dalmy to wait a year before she sold her Zenergy stock, since she acquired her shares from Gasich. She did not do so. Because Dalmy failed to comply with the one-year holding requirement, she cannot invoke the Rule 144 safe harbor or the Section 4(1) exemption.

IV. Conclusion

For the reasons set forth herein, the court finds that Dalmy is liable for selling unregistered securities in violation of Section 5. Accordingly, the SEC's motion for partial summary judgment is granted.

ENTER:

/s/
JOAN B. GOTTSCHALL
United States District Judge

DATED: September 30, 2015

EXHIBIT 3

Confidential Treatment Requested by Pacific Stock Transfer
Zenergy International, Inc. C-07707-00500

DIANE D. DALMY
ATTORNEY AT LAW
8965 W. CORNELL PLACE
LAKEWOOD, COLORADO 80227
303.985.9324 (telephone)
303.988.6954 (facsimile)
email: ddalmy@earthlink.net

June 12, 2009

Pacific Stock Transfer Inc.
500 E. Warm Springs Road
Suite 240
Las Vegas, Nevada

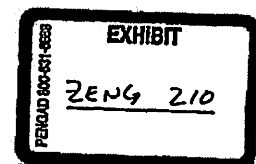
Re: Rule 144(b) Sale of Shares of Common Stock
of Paradigm Tactical Products Inc..

To Whom It May Concern:

I have acted as securities counsel to Paradigm Tactical Products Inc., a corporation organized under the laws of the State of Delaware (the "Corporation"). This opinion is written in connection with the settlement of debt in the amount of $30,000.00 (the "Zenergy Debt") between Zenergy Inc., a corporation organized under the laws of the State of Nevada ("Zenergy") and Robert Gasich ("Gasich"). The Zenergy Debt is evidenced by and reflected in the financial statements of Zenergy as of June 2006. As at June 2006, Zenergy and Gasich verbally agreed and established that the Zenergy Debt could be convertible at Gasich's sole option into shares of common stock of Zenergy at $0.0001 per share.

Subsequently, the Corporation, Zenergy and the shareholders of Zenergy (the "Zenergy Shareholders") entered into that certain share exchange agreement dated May 28, 2009 (the "Share Exchange Agreement"), pursuant to which the Corporation agreed to acquire one hundred percent of the total issued and outstanding shares of common stock of Zenergy in exchange for the issuance of 216,232,100 shares of the restricted common stock of the Corporation and to further assume the Zenergy Debt and issue shares of its common stock as settlement of the Zenergy Debt.

Plaintiff Exhibit
Exhibit No.: 42
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE



In further accordance with the terms and provisions of those certain partial assignments of the Zenergy Debt dated effective June 1, 2009 between Gasich and those certain assignees as listed (collectively, the "Partial Assignment of Zenergy Debt"), Gasich assigned a pro-rata portion of his right, title and interest in and to the Zenergy Debt to certain assignees (collectively, the "Assignees") and individually as follows: (i) Downshire Capital, Inc. in the amount of $1,000.00; (ii) Skyline Capital Investments Inc. in the amount of $3,760.00; (iii) Sigma Consulting Group Inc. in the amount of $2,600.00; (iv) Romero Kiep in the amount of $40.00; (v) Kymberly Nelson in the amount of $4,900.00; (vi) Javorka Gasich in the amount of $4,900.00; (vii) Nenad Jovanovich in the amount of $4,900.00; (viii) Diana Bozovic in the amount of $4,900.00; and (ix) Diane Dalmy in the amount of $400.00.

In accordance with the subsequent receipt of notices of conversion dated June 3, 2009 from the Assignees (collectively, the "Notice of Conversion") and settlement of the Debt by issuance of an aggregate of 283,000,00 shares of Common Stock of the Corporation to the Assignees, I am of the opinion that: (i) effective June 3, 2009, the restrictive legend may be removed from such share certificates to be issued to the Assignees; and (ii) the shares of common stock may be sold by the Assignees free of any restrictions on transfer without registration under the Securities Act of 1933, as amended (the "Act") pursuant to Rule 144(b) of the Act.

In connection with this opinion, I have examined the following:

1. Board of Director Resolutions of Zenergy dated June 2, 2009 effective June 1, 2006 ratifying and acknowledging the terms and provisions of the Zenergy Debt (the "Zenergy Board Resolutions").

2. Board of Director Resolutions of the Corporation dated June 3, 2009: (i) ratifying and acknowledging the terms and provisions of the Zenergy Debt; (ii) approving the assumption of the Zenergy Debt; (iii) acknowledging the Partial Assignment of Zenergy Debt; (iv) acknowledging receipt of the Notices of Conversion from the Assignees; and (v) approving the issuance of the aggregate 840,000 shares of common stock to the Assignees.

3. Share Exchange Agreement.

4. The Partial Assignment of Zenergy Debt.

5. The Notices of Conversion.

6. Certificate of Amendment to Certificate of Incorporation as filed with the Delaware Secretary of State on June 1, 2009 changing the par value of the Corporation's shares of common stock to $0.0001.

I have also investigated such other matters and examined such other documents as I have deemed necessary in connection with the rendering of this opinion. In examining these documents, I have assumed the genuineness of the signatures not witnessed, the authenticity of documents submitted as originals, and the conformity to originals of documents submitted as copies. This opinion is based solely on the facts and assumptions as set forth in this opinion and is limited to the investigation and examinations and such other investigation as I deemed necessary.

Based on the information provided and on my examination of the documents previously discussed, I find as follows:

1. The issuance of the aggregate 283,000,000 shares of common stock of the Corporation to the Assignees will be acquired by the Assignees from the Corporation in a private transaction pursuant to the terms of the Share Exchange Agreement, the Zenergy Debt and the Partial Assignment of Zenergy Debt. At the date of the Zenergy Debt, full consideration was given and received and the shares were deemed fully paid and non-assessable.

2. In accordance with the terms and provisions of the Partial Assignment of Zenergy Debt, Gasich assigned a portion of his right, title and interest in and to the Zenergy Debt proportionately to the respective Assignees.

3. The Assignees shall be deemed to have held the shares of common stock for in excess of one (1) year from the date of June 30, 2006 as established by the Zenergy Debt based upon the revised Rule 144 effective February 15, 2008.

4. None of the Assignees are currently nor have been during the preceding three months an affiliate of the Corporation as that term is defined by Rule 144. None of the Assignees are officers or directors of the Corporation nor a party in any manner of contract with the Corporation that would suggest a controlled relationship and none of the Assignees shall be considered an underwriter with respect to the shares within the meaning of Section 2(11) of the Act. None of the Assignees are under control of either the Corporation or any of its officers and directors.

5. The Corporation is not and has not been a shell corporation as defined in Rule 230.405 of the Securities Act.

Based on the above, I am of the opinion that: (i) as of June 3, 2009, the restrictive legend may be removed from the share certificates to be issued to the Assignees representing in the aggregate the 283,000,000 shares of common stock of the Corporation; (ii) as of June 3, 2009, the requirements of Rule 144(b) have been met and the sale of the shares of common stock of the Corporation to be evidenced by the share certificates to be issued to the respective Assignees will be exempt from the registration requirements of the Act under the exemption set forth in Rule 144(b); and (iii) the shares of common stock may be subsequently sold or transferred by the Assignees free of any restrictions on transfer.

Accordingly, you are instructed to issue the share certificates to the Assignees in the denominations reflected below representing in the aggregate 87,000,000 shares of common stock without the restrictive legend thereon:

Shareholder of Record	Denomination of Shares
Skyline Capital Investments Inc.	37,600,000
Sigma Consulting Group LLC	26,000,000
Downshire Capital Group Inc.	10,000,000
Romero Kiep	400,000
Kymberly Nelson	49,000,000
Javorka Gasich	49,000,000
Nenad Jovanovich	49,000,000
Diana Bozavic	49,000,000
Diane Dalmy	4,000,000

The Corporation, Pacific Stock Transfer Inc., any broker-dealer, any clearing firm and the Assignees are authorized to present this letter and to rely on this opinion in selling the shares of common stock and in registering transfer thereof. No other use of this opinion is authorized.

Sincerely,

Diane D. Dalmy

EXHIBIT 4

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4
5 SECURITIES AND EXCHANGE)
COMMISSION,)
6 Plaintiff,)
vs.) No. 13 CV 05511
7 ZENERGY INTERNATIONAL, INC.,)
BOSKO R. GASICH,)
8 ROBERT J. LUITEN,)
SCOTT H. WILDING,)
9 SKYLINE CAPITAL, INC.,)
RONALD MARTINO, and)
10 DIANE D. DALMY,)
Defendants,)
11 and)
MARKET IDEAS, INC.,)
12 Relief Defendant.)
13
14
15 The videotaped discovery deposition
16 of DIANE DISHLACOFF DALMY, ESQUIRE, taken in
17 the above-entitled cause, before Deralyn Gordon,
18 a notary public of Cook County, Illinois, on
19 the 10th day of June, 2014, at 175 West Jackson
20 Boulevard, Suite 900, Chicago, Illinois, beginning
21 at approximately 9:40 a.m., pursuant to Notice.
22
23 REPORTED BY: DERALYN GORDON, CSR, RPR, CRR
24 LICENSE NO: 084-003957

Page 2

1 PRESENT:
2
3 UNITED STATES SECURITIES AND EXCHANGE
4 COMMISSION
5 BY DANIEL J. HAYES, ESQ., and
6 PAUL M.G. HELMS, ESQ.,
7 175 West Jackson Boulevard, Suite 900
8 Chicago, Illinois 60604
9 (312) 353-3368
10 hayesdj@sec.gov
11 helmsp@sec.gov
12 appeared on behalf of plaintiff;
13
14 KOPECKY SCHUMACHER BLEAKLEY ROSENBURG PC
15 BY HOWARD ROSENBURG, ESQ.,
16 203 North LaSalle Street, Suite 1620
17 Chicago, Illinois 60601
18 (312) 380-6631
19 hrosenburg@ksblegal.com
20 appeared on behalf of defendant
21 Diane D. Dalmy;
22 ALSO PRESENT:
23 Mr. Ben Feis;
24 Mr. Scott Johnson, Videographer.

Page 3

1 I N D E X
2 VOLUME I
3
4 Tuesday, June 10, 2014
5

	WITNESS	EXAMINATION
6	WITNESS	EXAMINATION
7	DIANE DISHLACOFF DALMY, ESQUIRE	
8	By Mr. Hayes	9
9	By Mr. Rosenburg	290

10
11
12
13
14 PLAINTIFF'S DEPOSITION EXHIBITS
15 DIANE DISHLACOFF DALMY, ESQUIRE
16

Line	NUMBER	DESCRIPTION	IDENTIFIED
17	NUMBER	DESCRIPTION	IDENTIFIED
18–19	20	Letter from Diane Dalmy to Ana Melgoza dated 9/22/08 Bates SEC-WilsonDavis-B-0001751 - SEC-WilsonDavis-B-0001753	37
20–22	21	Email from Liquid Investors Organization to Diane Dalmy dated 1/1/09 Bates DAL000288	49
23–24	22	Email from Liquid Investors Organization to Rick dated 3/19/09 Bates DAL000257 - DAL000258	53

Page 4

1 PLAINTIFF'S DEPOSITION EXHIBITS
2 DIANE DISHLACOFF DALMY, ESQUIRE
3

Line	NUMBER	DESCRIPTION	IDENTIFIED
4	NUMBER	DESCRIPTION	IDENTIFIED
5–6	23	Email from Liquid Investors Organization to Diane Dalmy dated 3/6/09 Bates DAL000270 - DAL000273	54
7–9	24	Email from Liquid Investors Organization to Diane Dalmy dated 3/24/09 Bates DAL000250	64
10–11	25	Email from Liquid Investors Organization to Diane Dalmy dated 3/24/09 Bates DAL000451	67
12–14	26	Email from Liquid Investors Organization to Diane Dalmy dated 3/25/09 Bates DAL000442 - DAL000443	92
15–16	27	Email from Liquid Investors Organization to Diane Dalmy dated 3/27/09 Bates DAL000440 - DAL000441	99
17–19	28	Email from Liquid Investors Organization to Diane Dalmy dated 4/19/09 Bates DAL000185	105
20–21	29	Email from Liquid Investors Organization to Daniel Ryan dated 3/28/09 Bates DAL000241 - DAL000242	109
22–24	30	Email from Liquid Investors Organization to Diane Dalmy dated 5/28/09 Bates DAL000376 - DAL000377	111

Page 5

PLAINTIFF'S DEPOSITION EXHIBITS

DIANE DISHLACOFF DALMY, ESQUIRE

NUMBER	DESCRIPTION	IDENTIFIED
31	Letter from Diane Dalmy to Robert Gasich dated 4/1/09 No Bates numbers	122
32	Email from Liquid Investors Organization to Diane Dalmy dated 4/1/09 Bates DAL000223	124
33	Email from Liquid Investors Organization to Diane Dalmy dated 4/10/09 Bates DAL000408	129
34	Email from Liquid Investors Organization to Diane Dalmy dated 4/13/09 Bates DAL000194 - DAL000195	137
35	Email from Liquid Investors Organization to Diane Dalmy dated 4/13/09 Bates DAL000402 - DAL000403	141
36	Notice of Conversion Bates DAL000182 - DAL000183	155
37	Email from Liquid Investors Organization to Diane Dalmy dated 6/3/09 Bates DAL000361	171
38	Email from Optimal246@aol.com to Diane Dalmy dated 6/4/09 Bates SEC-DALMY-B-0000035 - SEC-DALMY-B-0000036	180

Page 6

PLAINTIFF'S DEPOSITION EXHIBITS

DIANE DISHLACOFF DALMY, ESQUIRE

NUMBER	DESCRIPTION	IDENTIFIED
39	Share Exchange Agreement No Bates numbers	188
40	Email from Liquid Investors Organization to Diane Dalmy dated 5/31/09 Bates DAL000161 - DAL000162	191
41	Email from Liquid Investors Organization to Diane Dalmy dated 6/1/09 Bates DAL000158	198
42	Letter from Diane Dalmy to Pacific Stock Transfer Inc. dated 6/12/09 No Bates numbers	208
43	Letter from Diane Dalmy to Pacific Stock Transfer Inc. dated 6/15/09 No Bates numbers	221
44	Letter from Diane Dalmy to Pacific Stock Transfer Inc. dated 6/15/09 No Bates numbers	235
45	Email from Liquid Investors Organization to Yvonne Mui dated 6/20/09 No Bates numbers	236
46	Email from Diane Dalmy to Michael Cruz dated 7/1/09 No Bates numbers	244

Page 7

PLAINTIFF'S DEPOSITION EXHIBITS

DIANE DISHLACOFF DALMY, ESQUIRE

NUMBER	DESCRIPTION	IDENTIFIED
47	Email from Optimal246@aol.com to Diane Dalmy dated 7/20/09 Bates SEC-DALMY-B-0000014	252
48	Letter from Diane Dalmy to Wilson Davis & Company dated 8/26/09 No Bates numbers	258
49	Email from Diane Dalmy to Vincent Cammarata dated 12/17/09 Bates DAL000307 - DAL000308	272
50	Letter from Diane Dalmy to Pacific Stock Transfer Inc. dated 12/28/09 No Bates numbers	278
51	Answer of Defendant Diane D. Dalmy No Bates numbers	279
52	Letter from Howard Rosenburg to Daniel J. Hayes dated 3/28/14 No Bates numbers	281
53	Letter from Diane Dalmy to BMA Securities dated 10/20/09 No Bates numbers	288

Page 8

1 THE VIDEOGRAPHER: This is tape number one
2 to the videotaped deposition of Diane Dalmy being
3 taken in the matter of the Securities and Exchange
4 Commission versus Zenergy International,
5 Incorporated, et al., case number 13 CV 05511.
6 This deposition is being held at
7 175 West Jackson Boulevard, Chicago, Illinois.
8 Today's date is June 10, 2014. The time is
9 9:40 a.m.
10 My name is Scott Johnson, the
11 videographer. The court reporter is
12 Deralyn Gordon.
13 State your name for the record.
14 MR. HAYES: Dan Hayes, attorney for the
15 Securities and Exchange Commission, the plaintiff
16 in the case.
17 Also with us today in the room is Ben
18 Feis, F-i-e-s, who is a summer intern with the
19 SEC. Not here yet but will be joining us,
20 is Paul Helms an attorney with the SEC.
21 MR. ROSENBURG: Howard Rosenburg,
22 R-o-s-e-n-b-u-r-g, representing Diane Dalmy,
23 the deponent.
24 THE VIDEOGRAPHER: Will the court reporter

Page 9

1 please swear in the witness.
2 (Whereupon the witness was
3 sworn.)
4 DIANE DISHLACOFF DALMY, ESQUIRE,
5 called as a witness herein, having been first duly
6 sworn, was examined and testified as follows:
7 EXAMINATION
8 BY MR. HAYES:
9 Q. Ms. Dalmy, could you state and spell your
10 full name for the record, please?
11 A. Yes. It's Diane, D. is the middle
12 initial, Dalmy, D-a-l-m-y.
13 Q. And, Ms. Dalmy, do you have a microphone
14 there? Could you put that on your lapel?
15 Ms. Dalmy, have you ever sat for a
16 deposition before?
17 A. Yes.
18 Q. Okay. And you're an attorney, correct?
19 A. Yes, I am.
20 Q. Okay. So you're familiar kind of with the
21 general ground rules for the deposition?
22 A. Yes.
23 Q. I mean, we'll go over some of the them in
24 any event.

Page 10

1 But let me ask you how many times have you
2 actually sat for a deposition?
3 A. Three.
4 Q. Okay.
5 A. Including this, the third.
6 Q. Including today?
7 A. Yes.
8 Q. Okay. And when were those other
9 depositions?
10 A. The second one was approximately two weeks
11 ago, and the first one was related to this case
12 with regards to, I don't recall the year, 2011?
13 Q. Okay. So let me just clarify, I guess,
14 briefly.
15 Those other two instances that you're
16 referring to, were those testimony --
17 investigative testimonies in SEC proceedings?
18 A. Yes.
19 Q. Okay. So that one about two weeks ago,
20 was that in connection with an investigation being
21 conducted by the SEC's New York office?
22 A. Yes.
23 Q. Okay. And then the first one that you
24 were referring to was an investigative testimony

Page 11

1 in connection with this --
2 A. Yes.
3 Q. -- litigation, correct?
4 A. Yes.
5 Q. Okay. So putting that -- I will call
6 those testimonies or investigative testimonies;
7 is that fair?
8 A. Yes.
9 Q. Okay. This now is part of a lawsuit is a
10 deposition, which is a little different than an
11 investigative testimony.
12 A. Oh.
13 Q. But it's similar in a lot of respects.
14 Have you ever provided testimony as part
15 of a deposition?
16 A. No.
17 Q. Okay. So some of the ground rules. Your
18 testimony today is obviously under oath. The
19 court reporter is trying to take down everything
20 that we say.
21 So the record is clear, please allow me
22 to finish my questions before you start your
23 answers. And I will allow you, hopefully,
24 to finish your answer before I start my next

Page 12

1 question. Is that fair?
2 A. Yes.
3 Q. Okay. To the extent you don't know the
4 answer to one of my questions or don't understand
5 it, please let me know.
6 If you respond to a question, I'm going to
7 assume that you understood it. Is that fair?
8 A. Yes.
9 Q. Okay. Again, the court reporter, because
10 she's trying to take down a written transcription
11 of what we're saying, please make sure that your
12 answers are audible responses as opposed to nods
13 of the heads or a shaking of the head. Is that
14 fair?
15 A. Yes.
16 Q. Okay. Please also remember that if the
17 answer is yes or no, please state yes or no
18 instead of uh-huh or uh-uh, because that's hard to
19 decipher on the transcript. Okay?
20 A. Yes.
21 Q. If you need to take a break for any reason
22 to use the restroom, make a phone call -- this is
23 not an endurance test -- please let me know.
24 We'll find an appropriate time to take a break for

Page 13

1 you. Is that all right?
2 A. Thank you. Uh-huh.
3 Q. Is there any reason today that you cannot
4 provide complete, accurate and truthful testimony?
5 A. No.
6 Q. You're not taking any medication or
7 anything or drugs or alcohol that might affect
8 your ability to testify?
9 A. No.
10 Q. Okay. Earlier you mentioned briefly
11 that you had provided investigative testimony as
12 part of this proceeding, correct?
13 A. Yes.
14 Q. Okay. And that was a couple of years,
15 a few years ago that you did that?
16 A. Yes.
17 Q. Okay. Have you reviewed the transcript of
18 that testimony?
19 A. Yes, I have.
20 Q. And when was the last time you reviewed
21 the transcript?
22 A. Four days ago.
23 Q. Okay. In your review of the transcript,
24 did you notice or are you aware of any answers

Page 14

1 that you gave in response to that -- those
2 questions that are false or inaccurate?
3 A. No.
4 Q. Is there any reason, as you sit here
5 today, based on your review of that transcript,
6 that you feel that you need to modify or amend
7 your answers?
8 A. Supplement them.
9 Q. Okay. Is there any, excuse me, anything
10 specifically, topics, that you want to supplement
11 your opinions on or your testimony on?
12 A. Several of the issues relating to this
13 case.
14 Q. Okay. And what is -- what's the reason
15 now that you feel like you want to supplement your
16 testimony?
17 What was it about your testimony
18 given back then that you feel deserves to be
19 supplemented now?
20 A. Because I've had time to refresh my memory
21 and make some recollections and also review the
22 documents for the first time that I had provided
23 the SEC, which I received yesterday.
24 Q. Okay. And you received those documents

Page 15

1 that you provided to the SEC yesterday from
2 Mr. Rosenburg?
3 A. From Mr. MacPhail in Denver.
4 Q. Okay. So Mr. MacPhail yesterday provided
5 to you documents that you had previously provided
6 to the SEC, correct?
7 A. Yes.
8 Q. But those documents were always in your
9 possession or control, correct?
10 A. No, because my -- when I provided
11 those documents, after that my computer crashed.
12 So I did not keep copies of what I had provided
13 the SEC. So I did not have those documents until
14 yesterday.
15 Q. Okay. But at the time you provided them
16 to the SEC, they were under your possession and
17 control, correct?
18 A. On my computer, yes.
19 Q. Okay. And you gave them to Mr. MacPhail,
20 correct?
21 A. No. I sent them directly to Paul Helms.
22 Q. Okay. And then how did you get them
23 from -- you said you got them from Mr. MacPhail.
24 How did he get them?

Page 16

1 A. I don't know. I would assume the SEC
2 provided him a copy.
3 Q. Okay. And why did -- did you request
4 copies of these documents from Mr. MacPhail
5 recently?
6 A. Well, I was provided --
7 MR. ROSENBURG: Let's just be careful
8 about privileged communications so --
9 MR. HAYES: And I'm just talking about
10 requests for documents. I don't know how that
11 could be privileged.
12 A. I was --
13 MR. ROSENBURG: I understand. Let's
14 just --
15 THE WITNESS: Okay.
16 A. I was provided a disk from Mr. Rosenburg
17 with SEC documents, of which I could open nothing
18 on that disk. So I was concerned and told
19 Mr. MacPhail on Friday. And then he provided me
20 with a copy of the documents that I had supplied
21 the SEC yesterday.
22 BY MR. HAYES:
23 Q. Okay. So let's talk about your production
24 of documents.

Page 17

1 As part of the, as part of the SEC's
2 investigation, you were served with a -- in
3 this matter, you were served with a subpoena for
4 documents, correct?
5 A. Yes.
6 Q. And you produced documents in response to
7 that subpoena, correct?
8 A. Yes.
9 Q. Did you -- in your production of
10 documents in response to that subpoena, did you
11 intentionally withhold or fail to produce any
12 documents that were responsive?
13 A. Quite the contrary. I produced everything
14 that I had.
15 Q. Okay. So you didn't withhold or fail to
16 produce -- intentionally withhold or fail to
17 produce documents that were responsive to that
18 subpoena?
19 A. No.
20 Q. Okay. Now, after this litigation, this
21 lawsuit was filed, you received or your attorney
22 received a copy of a separate document -- written
23 document request from the SEC, correct?
24 A. I don't recall.

Page 18

1 Q. Did your -- did anybody in this case
2 provide to you a copy of a document called SEC's
3 Request for Production of Documents?
4 A. I don't recall. He might have. I don't
5 recall.
6 Q. Okay. Do you recall being asked to
7 produce documents again in response to a request
8 from the SEC as part of this litigation?
9 A. No.
10 Q. Okay. Did you -- after this lawsuit
11 was filed, did you undertake to locate additional
12 documents that were not produced in response to
13 the SEC's original investigative subpoena?
14 A. My attorney did. He -- because my
15 computer had crashed, and I believe my attorney,
16 Michael MacPhail, was working with a computer
17 technician to pull out any, however you want to
18 put that, emails specifically that you couldn't
19 see that were embedded in the computer perhaps.
20 Q. Okay. So when did your computer crash?
21 A. 2012.
22 Q. Okay. And when was it that Mr. MacPhail
23 was working with a computer technician to kind of
24 retrieve additional emails from your computer?

Page 19

1 A. I believe about 6 months ago.
2 Q. Okay. And what was it that initiated
3 Mr. MacPhail's search for this additional
4 information on your computer?
5 MR. ROSENBURG: If you know.
6 A. I don't know. Just to ensure that I
7 produced everything I had in my possession to
8 the SEC.
9 BY MR. HAYES:
10 Q. Okay. And did you -- are you aware
11 whether or not Mr. MacPhail or Mr. Rosenburg on
12 your behalf produced additional documents to the
13 SEC?
14 A. I believe additional documents were
15 produced.
16 Q. Did you receive copies of any of those
17 additional documents?
18 A. No.
19 Q. As you sit here today, have you seen any
20 copies of those additional documents that were
21 produced?
22 A. I don't recall. I -- no, I don't, don't
23 believe so.
24 Q. You don't believe so?

Page 20

1 A. No, I don't believe so and I don't recall.
2 Q. Well, do you know when those documents,
3 those additional documents, were produced to the
4 SEC?
5 A. I believe 6 months ago.
6 Q. Okay. And so in the last 6 months, you
7 have not reviewed, to your, the best of your
8 knowledge, any of those additional documents that
9 were produced to the SEC?
10 A. No, because I don't know what additional
11 documents were produced.
12 I know there were some emails, I believe,
13 that he was able to get out of the computer, the
14 technician.
15 Q. Okay.
16 A. I don't --
17 Q. Go ahead.
18 A. I don't know.
19 Q. So what you're saying is that if -- and
20 I don't want to put words in your mouth, but I
21 think what you're saying is that as a result of
22 this computer technician finding these additional
23 documents or finding documents on your computer,
24 you don't know which of those documents were

Page 21

1 previously produced and which of those documents
2 were not previously produced?
3 A. I believe they were emails.
4 Q. Okay.
5 A. And that's all I recall.
6 Q. Okay. As a result of the computer
7 technician's search of additional effort --
8 additional documents on your computer, were you
9 given to review any of the documents that the
10 computer technician found?
11 A. I believe Michael MacPhail sent me via
12 email one or two of the email correspondences
13 that he had been able to get from the computer. I
14 don't recall.
15 I believe it related to the convertible
16 note. I don't recall anything else.
17 Q. Okay. And the convertible note you're
18 referring to, is that the convertible note between
19 Robert Gasich and Zenergy?
20 A. Yes.
21 Q. Other than those few emails that
22 Mr. MacPhail provided to you, since your --
23 the computer technician retrieved these
24 documents from your computer within the last

Page 22

1 6 months.
2 Have you reviewed any other documents
3 produced by you or on your behalf in this case?
4 A. No.
5 THE WITNESS: Would that include the
6 Form 1A?
7 BY MR. HAYES:
8 Q. Have you --
9 A. I don't know what you're asking.
10 Q. Okay. In preparation for your deposition
11 today, did you review any documents?
12 A. Yes.
13 Q. What?
14 A. A Form 1 -- a Form A registration
15 statement.
16 Q. Okay. What else?
17 A. Financial statements.
18 Q. Anything else?
19 A. No. That was it.
20 Q. Within the last 6 months have you reviewed
21 any of your emails or other documents relating to
22 the Zenergy/Paradigm matter?
23 A. No.
24 Q. Okay. Who is your computer technician --

Page 23

1 I'm sorry. Strike that.
2 Who was the computer technician that
3 helped retrieve the documents from your computer?
4 A. Michael Lamb.
5 Q. And do you have Michael Lamb's contact
6 information?
7 A. No, not here.
8 Q. And where is Michael Lamb located?
9 A. Denver, Colorado.
10 Q. Does he work for a company?
11 A. No.
12 Q. And is it Lamb, L-a-m-b?
13 A. Yes.
14 Q. And how do you know Michael -- do you know
15 Michael Lamb?
16 A. He's a computer technician. I've engaged
17 his services many times.
18 Q. And where is your computer?
19 Is this a laptop?
20 A. It was a laptop.
21 Q. Okay. And where is this laptop?
22 A. My understanding it's been thrown away or
23 recycled.
24 Q. What's that understanding based on?

Page 24

1 A. From Michael Lamb's statements.
2 Q. Statements to you?
3 A. Yes.
4 Q. Okay. When were these statements?
5 A. Approximately 6 months ago.
6 Q. Okay.
7 A. Five months ago.
8 Q. And was this a telephone call or was
9 this --
10 A. Yes, telephone call.
11 Q. Okay. And what did Michael Lamb tell you?
12 A. He said my computer was so corrupted that
13 there was no reason to save it.
14 So I don't know if that implies that he
15 threw it away or he still has it. I would have to
16 confirm that.
17 Q. Okay. So you don't know one way or the
18 other?
19 A. My understanding is that he tossed it.
20 Q. All right. Did he -- do you know if
21 he kept a copy of the hard drive or anything
22 associated with the computer?
23 A. I do not know.
24 Q. Okay. Were you surprised to hear --

Page 25
1 strike that.
2 You understand that you have an obligation
3 to preserve all potentially relevant materials as
4 part of this litigation?
5 A. Yes.
6 Q. Okay. Were you surprised then to hear
7 that Michael Lamb threw out your computer?
8 A. I didn't see the relevancy of that.
9 Q. Why not?
10 A. Because I had already produced everything
11 I had on that computer to the SEC.
12 Q. Well, you, frankly, don't know what
13 Michael Lamb produced to the SEC or your attorneys
14 produced to the SEC because you've never reviewed
15 those materials, correct?
16 A. That's correct. My understanding is it
17 was a couple of emails.
18 Q. Would you be surprised to know that it's
19 dozens, if not hundreds, of pages?
20 A. I'm not aware of that.
21 Q. Okay. I sent a letter to your attorney
22 last week identifying the specific documents that
23 were produced prior to -- or that have
24 subsequently been produced as part of this

Page 26
1 litigation that were not produced in the -- in
2 response to the earlier investigative subpoena.
3 Have you seen a copy of that letter?
4 A. No, I haven't.
5 Q. Okay. Did you instruct Mr. Lamb to
6 discard your computer?
7 A. No, I did not.
8 Q. Do you know if anyone else, any of your
9 attorneys, instructed him to discard your
10 computer?
11 A. Not at all.
12 Q. Did you instruct Mr. Lamb to preserve your
13 computer and the information on it?
14 A. Yes, I did.
15 Q. Okay. When did you do that?
16 A. When I gave it to him. There's other --
17 there's pictures, there's other material on that
18 computer that I would want.
19 Q. Okay. And so were you surprised then when
20 he -- when you learned he discarded the computer?
21 A. I don't know if surprised is the right
22 word. Disconcerted.
23 Q. Okay. As far as you know, nobody on --
24 neither you or anybody else on your behalf

Page 27
1 informed the SEC until today that your computer
2 had been discarded?
3 A. I'm not positive if it was discarded.
4 This is his language to me that -- because I was
5 trying to retrieve a little disk in there that
6 had pictures from whitewater rafting.
7 And his response to me was I might have
8 thrown your computer out; it was so corrupt. That
9 was the last time I've spoken would him.
10 Q. Okay. So what did you say in response to
11 that? Did you --
12 A. I asked him why he would do that.
13 Q. And what did --
14 A. It's my property.
15 Q. Right.
16 And what did he say?
17 A. He said it was just so corrupt. And he
18 said he has so many old, trashy computers stacked
19 up in his office that he can't just keep all of
20 them.
21 Q. And so when did this conversation take
22 place?
23 A. I don't recall.
24 Q. More than a month ago?

Page 28
1 A. Oh, yes.
2 Q. More than 3 months ago?
3 A. Yes.
4 Q. Six months ago?
5 A. I don't recall.
6 Q. Somewhere between 3 and 6 months ago?
7 A. Yes. Around the time that we -- he was --
8 I was asking him to work with Michael MacPhail to
9 retrieve any other information that he could.
10 Q. Okay. And so my kind of question about --
11 strike that.
12 Once you learned that -- again, strike
13 that.
14 After you learned that Mr. Lamb may have
15 discarded your computer, you did not inform the
16 SEC of that fact until today, correct?
17 A. That's correct.
18 Q. Okay. And your -- do you know whether or
19 not anyone else, including your attorneys, made
20 any effort to notify the SEC that your computer
21 may have been discarded?
22 A. No.
23 Q. Okay. Did you -- well, strike that.
24 Ms. Dalmy, what's your current occupation?

Page 29

1 A. Lawyer.
2 Q. And what type of lawyer? What area of
3 practice?
4 A. Corporate and securities.
5 Q. Okay. Do you have any other source of
6 income other than through your work as a lawyer?
7 A. No.
8 Q. Are you currently married?
9 A. [redacted].
10 Q. Divorced?
11 A. [redacted]
12 Q. Okay. Do you have any ownership or
13 membership interest in any business entities?
14 A. I hold shares in Zenergy.
15 Q. Any other companies that you own shares
16 in?
17 A. Avidity I have an interest; it's an LLC.
18 Q. How did you acquire your shares in
19 Avidity?
20 A. And one other, Parking Partners Capital.
21 Ten to 12 years ago it was an investment me and my
22 husband made.
23 Q. Okay. Did you provide any legal services
24 to a individual at this?

Page 30

1 A. On the periphery. Larry Lansing, who's
2 with Avidity, was a close friend.
3 Q. Okay. Could you spell Avidity for me?
4 A. A-v-i-d-i-t-y.
5 Q. And what kind of peripheral legal services
6 did you provide?
7 A. I believe I re- -- this was over 10 years
8 ago.
9 I believe I reviewed a licensing
10 agreement.
11 Q. Okay. Did you prepare any Rule 144
12 opinion letters?
13 A. No.
14 Q. What was the name of the other company you
15 said you owned shares in?
16 A. Parking Partners.
17 Q. And how did you acquire your shares in
18 Parking Partners?
19 A. It was an investment.
20 Q. When was that?
21 A. Over 10 years ago.
22 Q. And did you provide any legal services to
23 Parking Partners?
24 A. Again, he was a friend, and I prepared a

Page 31

1 private placement memorandum for him.
2 Q. And who was this friend with respect to
3 Parking Partners?
4 A. I'm trying to remember his name. It
5 escapes me right now.
6 Q. Okay. Did you provide any Rule 144
7 opinion letters?
8 A. No. No.
9 Q. Other than Avidity, Parking Partners
10 and Zenergy, do you hold any ownership interest
11 or membership interest in any other companies?
12 A. Double Crown Resources issued shares to
13 me, but I've done nothing with those.
14 Q. Okay. Any other companies?
15 A. No.
16 Q. Double Crown Resources, what kind of
17 company is that?
18 A. It's a public company. It used to be
19 my client.
20 Q. And when did you acquire your shares in
21 Double Crown Resources?
22 A. It must have been 4 years ago.
23 Q. Okay. And did you provide any legal
24 services to Double Crown?

Page 32

1 A. Yes. They were my client.
2 Q. Okay. Just try to let me finish my --
3 A. Oh. Sorry.
4 Q. That's okay.
5 So did you provide any legal services to
6 Double Crown Resources?
7 A. Yes.
8 Q. And what kind of legal services did you
9 provide?
10 A. Corporate and securities.
11 Q. Okay. Any rule -- did you provide any
12 Rule 144 opinion letters in connection with
13 Double Crown resources?
14 A. I believe so.
15 Q. And did you -- how was it that you
16 personally acquired your shares in Double Crown
17 Resources?
18 A. The board of directors informed me that
19 my services were excellent, and they wished to
20 issue me some shares.
21 Q. Okay. Was that in compensation for the
22 legal services you provided?
23 A. Not at all.
24 Q. Was it in recognition for the legal

Page 33

1 services that you provided?
2 A. Yes.
3 Q. Okay. How many shares did you receive in
4 Double Crown Resources?
5 A. I don't recall.
6 Q. Okay. Do you recall how many you
7 currently own in Double Crown Resources?
8 A. It would be the same that I was issued. I
9 would venture to say a million, but I don't -- no,
10 it can't be a million. Really, I don't know.
11 Q. And did you also receive payment for your
12 legal services?
13 A. Yes.
14 Q. And how did you -- what kind of payment?
15 Was it cash?
16 A. Yes. They were always paid -- my services
17 were always paid in cash.
18 Q. And how much cash do you think you
19 received in compensation for the legal services
20 you provided to Double Crown Resources?
21 A. Over all of the years?
22 Q. Well, yes, over all of the years.
23 A. Fifty -- well, there were probably 3 years
24 I was counsel, 60, 70,000.

Page 34

1 Q. Okay. And how long have you -- has
2 Double Crown Resources been a client of yours?
3 A. Approximately 3 years.
4 Q. Okay. When's the last time you provided
5 any type of legal service to Double Crown
6 Resources?
7 A. Well over a year ago.
8 Q. Okay. And who currently is the president
9 or CEO?
10 A. Jerry Drew.
11 Q. And how do you spell that?
12 A. Jerry, J-e-r-r-y, and Drew, D-r-e-w.
13 Q. And where is Mr. Drew located?
14 A. California.
15 Q. Was Double Crown or has Double Crown
16 Resources been involved in any reverse mergers?
17 A. No.
18 Q. All right. Are you familiar with a
19 company called Paradigm Tactical Products?
20 A. Yes.
21 Q. And how is it that you're familiar with
22 Paradigm Tactical Products?
23 A. I was engaged as counsel.
24 Q. And when were you first engaged as counsel

Page 35

1 for Paradigm Tactical Products?
2 A. Approximately February 2009.
3 Q. And if you could explain to me how did
4 that come about initially, your engagement by
5 Paradigm Tactical Products?
6 And what I mean by that is who first
7 contacted you about becoming -- or being retained
8 by Paradigm?
9 A. It was a referral, but I don't recall who
10 first contacted me.
11 Q. Okay. And it was a referral by whom?
12 A. I believe it was an individual named
13 Dan Ryan.
14 Q. And prior to February 2009, did you know
15 Dan Ryan?
16 A. I believe I provided legal services to
17 Dan Ryan for incorporation of a company. That was
18 it.
19 Q. Okay. So you had worked on -- strike
20 that.
21 Prior to February 2009, you had worked on
22 a prior deal or a transaction with Mr. Ryan?
23 A. No.
24 Q. Okay. Explain to me then what it was that

Page 36

1 you did with respect to Mr. Ryan.
2 A. I believe it was incorporating a company
3 under Nevada.
4 Q. Okay. Was Mr. -- how was Mr. Ryan
5 associated with that company?
6 A. It was his company.
7 Q. Okay. So prior to February 2009, you
8 helped Mr. Ryan's company incorporate in Nevada?
9 A. Yes. I incorporated it.
10 Q. And what was the name of the company?
11 A. Something Gold. I don't recall.
12 Q. Had you had -- so other than this
13 company that you incorporated for Mr. Ryan,
14 had you provided legal services to Mr. Ryan or
15 to any company owned by Mr. Ryan?
16 A. I don't recall. I don't believe so. He's
17 not at the forefront certainly of my mind with
18 regard to past clients.
19 Q. Have you ever met Mr. Ryan personally?
20 A. No.
21 Q. The company that you're referring to that
22 you helped Mr. Ryan incorporate, was it ABV Gold,
23 Inc.?
24 A. Yes.

Page 37
1 Q. Okay. Did it subsequently become known as
2 PharmaCom Biovet, Inc.?
3 A. Yes. That was a transaction, yes. You
4 just refreshed my memory.
5 MR. HAYES: Can you mark that as
6 Plaintiff's Exhibit 20, please.
7 (Plaintiff's Deposition Exhibit
8 No. 20 marked for
9 identification.)
10 BY MR. HAYES:
11 Q. Ms. Dalmy, the court reporter has just
12 handed you what's been marked as Plaintiff's
13 Exhibit 20. If you could review it and let me
14 know if you recognize it.
15 A. Yes, I recognize it.
16 Q. Okay. And what is it?
17 A. It is an opinion under Rule 144.
18 Q. And it's provided by you, correct?
19 A. Yes.
20 Q. And with respect to a company called
21 PharmaCom Biovet, Inc., formerly known as
22 ABV Gold, Inc.?
23 A. Yes.
24 Q. Okay. So in addition to incorporating

Page 38
1 this company for Mr. Ryan, did you provide
2 any Rule 144 opinion letters with respect to this
3 company?
4 A. Actually, I did not incorporate ABV Gold.
5 As far as my services were related to a reverse
6 merger, I believe.
7 And the answer to your question is yes.
8 Q. Okay. Let me try to unpack that and
9 clarify it a little bit.
10 Earlier you testified that you
11 incorporated ABV Gold, Inc., in Nevada for
12 Mr. Ryan.
13 A. That is incorrect.
14 Q. Okay. And so tell me what is it that --
15 putting aside this Rule 144 opinion letter marked
16 as Exhibit 20, what legal services did you provide
17 to ABV Gold and Mr. Ryan?
18 A. It wasn't to Mr. Ryan. My services
19 were provided to ABV Gold, now known as
20 PharmaCom Biovet, with respect to a reverse
21 merger involving a private company.
22 I don't recall the name of the private
23 company.
24 Q. Okay. And then in connection -- in

Page 39
1 addition to -- strike that.
2 MR. HAYES: Can I see her answer.
3 BY MR. HAYES:
4 Q. Okay. You said your services were
5 provided to ABV Gold with respect to a reverse
6 merger.
7 A. Yes.
8 Q. What did you do?
9 A. I drafted a share exchange agreement and
10 then became counsel -- his name was Gary, I don't
11 recall his last name, he was in North Carolina --
12 with respect to his private company.
13 Q. Okay. So other than ABV Gold, have you
14 had any other business dealings with Mr. Ryan?
15 A. Not that I recall.
16 Q. If you look at this Exhibit 20
17 Rule 144 opinion, the first sentence there -- and
18 I'm just going to read it for the record.
19 It says "I have acted as counsel to
20 PharmaCom Biovet Inc., formerly known as
21 ABV Gold, Inc., a corporation organized under the
22 laws of the State of Nevada...in connection with
23 the settlement of debt as evidenced by the
24 certain convertible promissory note in the

Page 40
1 principal amount of $30,000 (the 'Debt')
2 between the Corporation and Daniel Ryan, a
3 consultant and the prior President and director of
4 the Corporation...dated August 1, 2006." Do you
5 see that?
6 A. Uh-huh. Yes.
7 Q. Okay. What is the debt that's referred to
8 there?
9 A. I don't recall any of this. This was in
10 2008.
11 Q. Okay. So you don't recall what you're
12 referring to -- as you read that, you can't recall
13 what you were referring to?
14 A. Not at all.
15 Q. Okay. Did Mr. Ryan hold some kind of
16 convertible note with respect to PharmaCom?
17 A. I don't recall. I don't recall this.
18 Q. If you look at the next sentence, it says
19 "In accordance with the terms and provisions of
20 that certain assignment of promissory note dated
21 July 29, 2008, (the 'Assignment of Convertible
22 Note') by Ryan of all of his right, title and
23 interest in and to the Convertible Note to
24 Joseph Bernaudo ('Bernaudo') and the subsequent

Page 41
1 assignment dated" 11 -- I'm sorry, "dated
2 September 11, 2008 (the 'Assignment') made by
3 Bernaudo to Market Ideas, Inc." Do you see that?
4 A. Yes.
5 Q. Were you familiar with the company
6 Market Ideas, Inc., back in September 2008?
7 A. No.
8 Q. Do you know who owns or who was a
9 shareholder in Market Ideas, Inc.?
10 A. I have no idea.
11 Q. Okay. Was -- with respect to ABV Gold or
12 PharmaCom Biovet, was Mr. Scott Wilding associated
13 with that company?
14 A. No.
15 Q. Mr. Bob Gasich?
16 A. No.
17 Q. What about Mr. Vincent Cammarata?
18 A. No.
19 Q. What about with respect to Market Ideas,
20 Inc., were any of those individuals that I just
21 mentioned affiliated with Market Ideas, Inc.?
22 A. I don't know who Market Ideas, Inc., is.
23 Q. Okay. When you provided this opinion,
24 Rule 144 opinion letter, back in September of

Page 42
1 2008, did you investigate who was -- who owned
2 Market Ideas, Inc.?
3 A. No.
4 Q. Was that relevant to you at all in
5 connection with your Rule 144 opinion letter
6 that you provided as part of Exhibit 20?
7 A. It would be, and most generally -- I can't
8 speak to the specifics circumstances because I
9 don't recall.
10 But when assignees are given assigned
11 debt, it's to compensate them for administrative
12 or financial or managerial or technology, website,
13 any services that they might have provided to the
14 company.
15 And the company is unable to pay them
16 because it's a small developmental company. So
17 they issue or -- so they assign debt, aged debt,
18 to compensate.
19 Q. And in this case that debt was then
20 converted then to stock, correct?
21 A. Based on this opinion, yes.
22 Q. Okay. And you're asked to issue an
23 opinion pursuant to Rule 144 that the shares are
24 unrestricted, correct?

Page 43
1 A. Yes.
2 Q. And you did that in this case --
3 A. Yes.
4 Q. -- with respect to PharmaCom, correct?
5 A. Yes.
6 Q. And in doing so is it important for you to
7 know if the assignees are in any way affiliated
8 with the issuing company?
9 A. What do you mean by affiliation?
10 Q. Have you ever in the course of your work
11 heard the term affiliate with respect to Rule 144?
12 A. Absolutely.
13 Q. Okay. What does it mean to you?
14 A. An officer, director or a 10 percent or
15 greater shareholder.
16 Q. Okay. So in connection with your issuing
17 your Rule 144 opinion letter in this case with
18 respect to PharmaCom Biovet, was it important
19 for you to know whether Market Ideas or any of
20 its owners were affiliates?
21 A. Absolutely. I would have asked that
22 question, uh-huh.
23 Q. Okay. So earlier I thought you said you
24 didn't undertake to do anything to determine who

Page 44
1 the owners of Market Ideas were.
2 A. I understood that question to mean who
3 were the people behind Market Ideas. That
4 wouldn't be relevant to me.
5 It would be relevant to know that
6 Market Ideas was not an affiliate in terms of
7 holding shares.
8 Q. Okay. Was it -- if one of the
9 shareholders -- if somebody that owned shares --
10 strike that.
11 If there was an individual that owned more
12 than 10 percent of the shares of Market Ideas that
13 also owned more than 10 percent of the shares of
14 PharmaCom Biovet, would that have been relevant to
15 you?
16 A. Yes.
17 MR. ROSENBURG: Objection, foundation,
18 calls for speculation.
19 BY MR. HAYES:
20 Q. So it is important to know who the
21 shareholders of Market Ideas are in connection
22 with issuing a Rule 144 opinion letter?
23 A. Yes.
24 Q. So, generally, when you're issuing your

Page 45

1 Rule 144 opinion letters, it is important for you
2 to know who the assignees are?
3 A. Yes.
4 Q. And whether those assignees have any
5 relationship with the issuing company that would
6 make them affiliates under Rule 144?
7 A. Yes. And I always check that.
8 Q. Okay. Let's move back to Paradigm
9 Technical Products. You said you were first
10 engaged or asked -- strike that.
11 I think you mentioned earlier you
12 were first asked to provide legal opinions to
13 Paradigm Technical Products in February of 2009?
14 A. Yes.
15 Q. And you don't recall who first contacted
16 you?
17 A. It would have been either Scott Wilding or
18 Vincent Cammarata.
19 Q. Okay. Prior to February of 2009, have you
20 ever had any business dealings with Mr. Wilding?
21 A. No.
22 Q. Prior to February 2009, had you ever had
23 any business dealings with Mr. Cammarata?
24 A. No.

Page 46

1 Q. And in February of 2009 when Mr. Wilding
2 or Mr. Cammarata asked you to provide legal
3 services for Paradigm Tactical Products, what
4 did they ask you to do?
5 A. They asked me to basically act as
6 transactional lawyer.
7 Q. With respect to any particular
8 transaction?
9 A. They were contemplating one.
10 Q. And what was that?
11 A. I don't believe a company had been
12 identified, but I recall my initial discussions
13 were that Mr. Cammarata felt it necessary and
14 in the best interest of the shareholders to move
15 the operations into another company.
16 Q. To merge Paradigm into another company?
17 A. Yes, or -- yes.
18 Q. Okay. Did he -- what kind of business was
19 Paradigm in at the time?
20 A. He was actively in business marketing and
21 distributing security-related devices.
22 Q. Okay. And were they -- was Mr. Cammarata
23 at that time looking to merge with another company
24 in a like industry?

Page 47

1 A. I don't know.
2 Q. Okay. Do you know -- at the time were
3 there any other shareholders of Paradigm Tactical
4 Products other than Mr. Cammarata?
5 A. Yes, there were other shareholders.
6 Q. Okay. And do you know whether Mr. Wilding
7 was a shareholder of Paradigm Tactical Products?
8 A. No.
9 Q. Okay. Did you know who any of the other
10 shareholders of Paradigm Tactical Products were?
11 A. I believe their identity was on a
12 shareholder resolution, which was signed for
13 the reverse stock split.
14 Q. Okay. And what you're referring to is
15 at some point after you were retained, Paradigm
16 engaged in a reversed stock split, correct?
17 A. Yes.
18 Q. Where they reduced the number of shares
19 outstanding by a factor of 75, correct?
20 A. Yes, I believe so.
21 Q. It's a 75 to 1 reverse stock?
22 A. Yes, I believe so.
23 Q. Prior to being contacted by either
24 Mr. Wilding or Mr. Cammarata, had you ever heard

Page 48

1 or provided legal services or had any business
2 dealings with Paradigm Tactical Products?
3 A. No.
4 Q. Did Paradigm after your engagement ever
5 identify any potential merger candidates?
6 A. My understanding is they were looking at
7 a couple of prospects, and then it resulted in
8 Zenergy.
9 Q. Okay. Prior to Zenergy did Paradigm
10 enter into merger negotiations with a company
11 called Naturally Splendid?
12 A. I don't recall.
13 Q. Do you know what? And before we
14 continue -- I may have asked you this; and if
15 I did, I apologize.
16 With respect to PharmaCom Biovet or
17 ABV Gold, was Mr. Wilding affiliated with that
18 company at all?
19 A. I have no idea.
20 Q. Okay. Do you recall providing any
21 Rule 144 opinion letters with respect to
22 Mr. Wilding and PharmaCom Biovet?
23 A. No.
24 MR. HAYES: Mark this, please, as

Page 49

1 Plaintiff's Exhibit 21.
2 (Plaintiff's Deposition Exhibit
3 No. 21 marked for
4 identification.)
5 BY MR. HAYES:
6 Q. Ms. Dalmy, if you could take a look at
7 what's been marked as Plaintiff's Exhibit 21,
8 which is a series of emails.
9 And I want to know, after you've reviewed
10 it, if you recognize the emails.
11 A. No.
12 Q. Okay. The email at the top is
13 dated January 1, 2009. And it's provided
14 by LiquidInvestorsOrganization at
15 (LiquidInvestorsOrg@AccessPro.net)
16 to DDalmy@Earthlink.net, your email address?
17 A. Yes.
18 Q. And was that your email address in
19 January of 2009?
20 A. Yes.
21 Q. In the last 10 years have you used any
22 other email addresses?
23 A. No.
24 Q. Okay. Is that your current email address?

Page 50

1 A. Yes.
2 Q. Okay. Do you have any reason to believe
3 that you did not receive this email from Liquid
4 Investors Organization?
5 A. I don't recall receipt of this email at
6 all.
7 Q. Okay. Do you see the Bates label down at
8 the bottom lower right-hand corner of this
9 document?
10 A. The dates?
11 Q. The Bates label. It's DAL000288.
12 A. Yes.
13 Q. Okay. That indicates to me that this
14 document was produced by your attorneys on your
15 behalf, that DAL refers to Dalmy. Do you see
16 that?
17 A. Yes.
18 Q. Okay. Do you know if this document was
19 one of the documents produced from your computer?
20 A. No.
21 Q. Okay. In any event, the from line,
22 "From: Liquid Investors Organization," do you
23 recognize that email name?
24 A. It's Scott. It appears to be Scott.

Page 51

1 Q. Okay. And you received emails from
2 Mr. Scott Wilding using this --
3 A. Yes.
4 Q. -- email address, correct?
5 A. Yes.
6 Q. So it looks like Mr. Wilding is providing
7 to you or forwarding to you a copy of an email
8 that's just below this that he sent to some other
9 individuals. Do you see that?
10 A. Yes.
11 Q. Okay. And the email below from
12 Mr. Wilding is dated December 30, 2008. And
13 it's to an Ana, who appears to be with Stalt,
14 @Stalt.com. Do you see that?
15 A. Yes.
16 Q. If you look at Exhibit 20, your
17 Rule 144 opinion letter, that was addressed to an
18 Ana Melgoza at Stalt Inc., right?
19 A. Yes.
20 Q. In the email Mr. Wilding writes "Dear Ana,
21 as you know my 110 shares of PharmaCom Biovet were
22 free trading when you issued them to me. You have
23 the original legal opinion and my 144 sellers
24 agreement that came with those said shares." Do

Page 52

1 you see that?
2 A. Yes.
3 Q. Okay. Does that refresh your recollection
4 at all with Mr. Wilding's involvement with
5 PharmaCom Biovet?
6 A. Not at all.
7 Q. Okay. Mr. Wilding forwards his email
8 to Ana on to you a day later on January 1, 2009.
9 Do you know why he did that?
10 A. No, I don't. I don't recognize this, nor
11 do I recall this email whatsoever.
12 Q. Okay. And so looking at this, does it
13 refresh your recollection at all that prior to
14 February 2009 that you had business dealings with
15 Mr. Wilding?
16 A. No. I don't recall this.
17 Q. Do you have any -- as you sit here today,
18 do you have any reason to -- strike that.
19 As you sit here today, can you think of
20 any reason why Mr. Wilding would be forwarding to
21 you this email in Exhibit 21?
22 A. I don't recall. I never recalled having
23 any type of interaction with Mr. Wilding prior to
24 Paradigm.

Page 53

1 Q. Would you at least concede that it's
2 possible that you had prior business dealings with
3 Mr. Wilding?
4 A. Possible, yes. Based on this email, yes.
5 Q. Okay.
6 A. But I don't recall.
7 Q. All right. Going back to Paradigm
8 Tactical Products -- and I think I asked you if
9 you recalled that Paradigm Tactical Products
10 entered into merger negotiations with a company
11 called Naturally Splendid.
12 A. Uh-huh.
13 Q. Do you recall that?
14 A. No. I recall your question.
15 Q. Thank you.
16 But you don't recall those negotiations?
17 A. No.
18 MR. HAYES: Okay. Could you mark this as
19 Plaintiff's Exhibit 22, please.
20 (Plaintiff's Deposition Exhibit
21 No. 22 marked for
22 identification.)
23 MR. HAYES: Can you mark this as
24 Exhibit 23.

Page 54

1 (Plaintiff's Deposition Exhibit
2 No. 23 marked for
3 identification.)
4 (Discussion held off the
5 record.)
6 BY MR. HAYES:
7 Q. Actually, Ms. Dalmy, if you could look at
8 Plaintiff's Exhibit 23 first, it is a series of
9 emails. And it's a 4-page document with the
10 Bates label DAL000270 to DAL000273. Do you see
11 that?
12 A. Yes.
13 Q. Okay. And I want to focus on the second
14 page.
15 At the top is an email from Liquid
16 Investors Organization -- and that's
17 Mr. Scott Wilding, correct?
18 A. Yes.
19 Q. And it's dated March 5, 2009, and it's to
20 you, Diane Dalmy. And the subject line is "How's
21 everything coming along? "
22 And in the email Mr. Wilding writes
23 "PDGT" --
24 That's Paradigm, correct?

Page 55

1 A. Yes.
2 Q. -- "is working on getting the last block
3 of the control block. They said they're getting
4 it. Dan is meeting with Craig Goodwin, CEO of
5 Naturally Splendid, which is merging into"
6 Paradigm -- I'm sorry, "PGDT to go over their debt
7 to convert into equity." Do you see that?
8 A. Yes.
9 Q. All right. In the email there who is the
10 Dan that is referenced?
11 A. Dan Ryan I would presume.
12 Q. Okay. Was Mr. Dan Ryan affiliated with
13 Paradigm Tactical Products?
14 MR. ROSENBURG: Objection, foundation.
15 THE WITNESS: What do I do?
16 MR. ROSENBURG: You can answer, if you
17 know.
18 THE WITNESS: Oh.
19 A. I don't -- no, he wasn't. I didn't work
20 with him with regards to Paradigm.
21 He referred me to Paradigm as far as
22 Vincent Cammarata.
23
24 BY MR. HAYES:

Page 56

1 Q. Okay. And looking at this email, does
2 it refresh your recollection that at some point,
3 at least by March of 2009, Paradigm was
4 considering a merger with a company called
5 Naturally Splendid?
6 A. No. I wasn't participating in any of
7 the preliminary negotiations. I know they were
8 looking at a variety -- not a variety, but a
9 couple of options.
10 MR. ROSENBURG: I think your answer is no,
11 it doesn't refresh your recollection.
12 THE WITNESS: It doesn't.
13 BY MR. HAYES:
14 Q. Okay. Do you know why Mr. Wilding is
15 sending this email to you about a merger
16 between --
17 A. No.
18 Q. I'm sorry.
19 Do you know why Mr. Wilding is sending
20 this email to you about a merger with Naturally
21 Splendid and Paradigm?
22 A. No.
23 Q. Okay. Do you know what business
24 Naturally Splendid was in?

Page 57

1 A. No, I don't.
2 Q. Do you know it was a health foods company?
3 A. I don't know anything about Naturally
4 Splendid.
5 Q. Okay. Take a look, if you will, at
6 Plaintiff's Exhibit 22. This is a two-page
7 document Bates labeled DAL257 -- let me strike
8 that.
9 Do you have a one-page or a two-page
10 document?
11 A. Two.
12 Q. Right. 257 -- I'm sorry. Strike that.
13 It's a 2-page document, DAL257 to 258,
14 correct?
15 A. Yes.
16 Q. Okay. And, again, this is a series of
17 emails that includes both you and Mr. Wilding and
18 Mr. Ryan, correct?
19 A. Yes.
20 Q. All right. And in the first email from
21 Mr. Wilding, it's dated 3/19/2009. Do you see
22 that?
23 A. Yes.
24 Q. And it's to a

Page 58

1 Rick@StockAwarenessGroup.com, a Vince, and a
2 JonL@lpsecuremail.com. And then you and
3 Mr. Ryan are cc'd on the email, correct?
4 A. Yes.
5 Q. Who is Rick@StockAwarenessGroup.com?
6 MR. ROSENBURG: Objection, foundation.
7 THE WITNESS: Can I answer?
8 MR. HAYES: You can answer.
9 A. I have no idea.
10 BY MR. HAYES:
11 Q. What about Vince?
12 A. Vincent Cammarata.
13 Q. So Vince is a reference to
14 Vincent Cammarata?
15 A. Yes.
16 Q. How about JonL@LPS -- I'm sorry,
17 JonL@LPSecureMail.com?
18 A. I have no idea.
19 MR. ROSENBURG: Objection, foundation.
20 BY MR. HAYES:
21 Q. In his email it says -- Mr. Wilding says
22 "Hi everyone, the deal is off with Naturally
23 Splendid but we're still going to continue
24 restructuring PDGT and merge a company into it.

Page 59

1 Maybe it was best this didn't happen. I will be
2 email everyone a few companies tonight and
3 tomorrow." Do you see that?
4 A. Yes.
5 Q. Okay. What did you understand Mr. Wilding
6 to be saying when he says that I will email
7 everyone a few companies tonight and tomorrow?
8 MR. ROSENBURG: Objection, foundation.
9 A. It was of no concern to me.
10 BY MR. HAYES:
11 Q. Did you -- do you -- did you read the
12 email when you got it?
13 A. I don't recall this email at all. I was
14 cc'd, so probably not.
15 Q. Is it your practice not to read emails
16 that are sent to you?
17 A. No. I read emails, but I receive
18 literally sometimes 100 emails a day.
19 This is preliminary negotiations. I don't
20 care.
21 Q. How would you know, unless you read it?
22 A. I don't recall whether I read this or not.
23 Q. So I'm just trying to understand your
24 practice, I guess, as part of your legal practice.

Page 60

1 How do you determine which emails to read
2 and which not to read?
3 A. When I have a role to play.
4 Q. Okay.
5 A. And I read them all. But when I have a
6 role to play, when I am required to do something,
7 then I focus in on the email. This is periphery.
8 Q. But weren't you retained at this point to
9 provide legal services to Paradigm?
10 A. Yes.
11 Q. Okay. So when you get an email from
12 Mr. Wilding or Mr. Cammarata related to Paradigm,
13 was it your practice to read those emails?
14 MR. ROSENBURG: Objection, form and
15 foundation.
16 A. I'm sure I read it, but it had no
17 relevancy or meaning to me.
18 BY MR. HAYES:
19 Q. Okay. So now that we've established that
20 you probably read this, do you recall as you sit
21 here today what you understood Mr. Wilding to mean
22 when he said I will be emailing everyone a few
23 companies tonight and tomorrow?
24 MR. ROSENBURG: I'm going to object again,

Page 61

1 because I think she's testified she doesn't
2 remember if she read it or not.
3 MR. HAYES: You can answer.
4 A. Our initial conversations when I was
5 engaged was basically that this company was in
6 full operational basis, but was not successful,
7 not generating revenues. So they were looking
8 for a merger candidate.
9 I was not a participant in any of these
10 conversations. I don't know Naturally Splendid.
11 I don't know these other few companies.
12 BY MR. HAYES:
13 Q. When you say that it was your
14 understanding that it was fully operational,
15 Paradigm was fully --
16 A. Uh-huh.
17 Q. How did you obtain that understanding?
18 A. Press releases on the Internet, several
19 conversations with Vincent Cammarata as to what he
20 was -- had been doing, what he was currently
21 doing.
22 Q. What did Mr. Cammarata tell you?
23 A. He said that he had several trips that
24 he had taken, one to China, and that he had been

Page 62

1 diligently working on marketing and developing
2 these products for sale.
3 Q. Okay.
4 A. And had some sales.
5 Q. Did he tell you -- did Mr. Cammarata tell
6 you when this company was first incorporated?
7 A. I don't recall.
8 Q. What else do you recall, if anything,
9 about what Mr. Cammarata told you about Paradigm?
10 A. We had several conversations about the
11 nature of the business operations.
12 I recall asking him about the press
13 releases and that it was a viable business, but
14 he have not succeeding in it.
15 Q. Did you review any of Paradigm's financial
16 statements?
17 A. Yes, but I don't recall ever receiving an
18 actual copy.
19 Q. Well, then how did you review them?
20 A. I believe that -- I don't recall.
21 Q. Okay. Was the information -- were there
22 financial statements publicly available?
23 A. I believe I saw financial statements
24 somewhere.

Page 63

1 Q. Okay. Was Paradigm a public company at
2 this time?
3 A. Yes.
4 Q. So its stock was publicly traded over some
5 exchange somewhere?
6 A. Pink sheets, I believe.
7 Q. Okay. And do you recall whether you
8 checked with pink sheets to see if they had any
9 of Paradigm's financial statements?
10 A. I don't recall where I saw financial
11 statements, but I recall seeing some financial
12 statements, ascertaining that it was a viable
13 company, and what Vinny was doing as far as
14 business operations.
15 Q. All right. My question is a little bit
16 different. And it was that do you recall ever
17 contacting pink sheets or reviewing any financial
18 information about Paradigm that was filed with
19 pink sheets?
20 A. That would absolutely be a source I
21 would go to, but I don't recall specifically doing
22 that.
23 Q. Okay.
24 A. That's a source I automatically go to.

Page 64

1 Q. In your practice in connection with your
2 representation of companies, you would look at the
3 company's financial information --
4 A. Absolutely. It's very important.
5 Q. I'm sorry.
6 You would look at the company's financial
7 information that was publicly available on pink
8 sheets?
9 A. Yes.
10 Q. And you believe, although you don't
11 remember, that you did that with respect to
12 Paradigm?
13 A. I don't recall.
14 Q. Okay. But it would be consistent with
15 your practice to do that?
16 A. Absolutely.
17 MR. HAYES: Okay. Mark this as
18 Plaintiff's Exhibit 24, please.
19 (Plaintiff's Deposition Exhibit
20 No. 24 marked for
21 identification.)
22 BY MR. HAYES:
23 Q. All right. Ms. Dalmy, if you could take
24 a look at Plaintiff's Exhibit 24 and let me know

Page 65

1 if you recognize this email.
2 A. I don't recall this email at all.
3 Q. Okay. It's a document Bates labeled
4 DAL250. It's from Liquid Investors Organization,
5 which, again, is Scott Wilding, correct?
6 A. Uh-huh.
7 Q. Is that a yes?
8 A. Yes.
9 Q. Thank you.
10 Dated March 24, 2009, and it's to you,
11 Diane Dalmy, correct?
12 A. Yes.
13 Q. And it's about Paradigm, correct?
14 A. Yes.
15 Q. And it's dated just five days after
16 Plaintiff's Exhibit 22, in which Scott Wilding
17 announced that the merger between Paradigm and
18 Naturally Splendid is off, correct?
19 A. Yes.
20 Q. Okay. So it says "Diane" -- I'm sorry,
21 back to Plaintiff's Exhibit 24.
22 Scott Wilding says "Diane, Vinnie said
23 do not communicate with Rick Fernandez,
24 Dino Paoulcci," P-a-o-u-l-c-c-i, "Jr., Tina

Page 66

1 Vasqaz," V-a-s-q-a-z, "or anyone else regarding
2 Paradigm. Please call Vincent to confirm. I will
3 explain everything when we talk next. I am trying
4 to put a deal together for PDGT."
5 Tell me what you understood Scott Wilding
6 to be saying in this email.
7 MR. ROSENBURG: Objection, no foundation.
8 MR. HAYES: You can answer.
9 A. I have no idea because I don't know who
10 Rick Fernandez is, nor do I know who Tina Vasquez
11 is.
12 Dino Paolucci is one of my clients
13 with Novus Robotics, a fully reporting company
14 that generates approximately $1 million a year.
15 BY MR. HAYES:
16 Q. Okay. So when you see this email from
17 Mr. Wilding, did you call him up or respond in
18 any way and say, you know, look, Scott, I don't
19 know what you're talking about?
20 MR. ROSENBURG: Objection, no foundation.
21 She testified she doesn't recall.
22 A. I don't recall. I don't recall.
23
24 BY MR. HAYES:

Page 67

1 Q. Do you remember if you read this email?
2 A. I don't recall this email.
3 Q. As you sit here today, do you have any
4 understanding or knowledge as to what Mr. Wilding
5 might be talking about?
6 A. None whatsoever.
7 Q. Did you have a subsequent meeting with
8 Mr. Wilding, as he references in this email, the
9 following week?
10 A. I've never met Mr. Wilding.
11 Q. All right. Did you have a subsequent
12 discussion with Mr. Wilding, as he references in
13 this email, the following week?
14 A. Probably, but I don't recall.
15 Q. Okay. So you don't recall Mr. Wilding
16 ever explaining to you what he meant by this
17 email?
18 A. Not at all.
19 MR. HAYES: Okay. Can you mark this as
20 Plaintiff's Exhibit 25, please.
21 (Plaintiff's Deposition Exhibit
22 No. 25 marked for
23 identification.)
24 BY MR. HAYES:

Page 68

1 Q. Ms. Dalmy, can you review Plaintiff's
2 Exhibit 25, which is, excuse me, an email
3 Bates labeled DAL451?
4 And let me know if you recognize this
5 email.
6 A. Yes, I recognize it.
7 Q. Okay. And this is, again, an email from
8 Mr. Wilding dated March 24, 2009, correct?
9 A. Yes.
10 Q. And it's the same date as the prior email
11 that we looked at as Plaintiff's Exhibit 24?
12 A. Yes.
13 Q. Which is approximately -- which is five
14 days after Mr. Wilding sent the earlier email
15 saying that the merger with Naturally Splendid
16 is off, correct?
17 A. Yes.
18 Q. Okay. In this email Mr. Wilding writes
19 "Dear Diane, PDGT and Zenergy International, Inc.,
20 www.ZenergyInternational.com, plan to do a merger
21 agreement between the said companies." Do you see
22 that?
23 A. Yes.
24 Q. And then he provides some information

Page 69
1 about the merger, correct?
2 A. Yes.
3 Q. Okay. Do you recall reading this email
4 when you received it?
5 A. I'm sure I read it, but I don't recall
6 reading it.
7 Q. Okay. In this email he provides a
8 number of pieces of information about Zenergy
9 International, including its web address, correct?
10 A. Yes.
11 Q. Okay. In the third sentence of this
12 email, Mr. Wilding writes "We would like to engage
13 your services to help us put this deal together.
14 When will you be available to have a conference
15 call this week?" Do you see that?
16 A. Yes.
17 Q. All right. So is it fair to say that
18 Paradigm retained you to help prepare the
19 legal documents associated with the merger
20 between Paradigm and Zenergy?
21 A. Yes.
22 Q. All right.
23
24 (Discussion held off the

Page 70
1 record.)
2 BY MR. HAYES:
3 Q. At the time you received this email, did
4 you check to see what type of business Zenergy was
5 in?
6 MR. ROSENBURG: Objection, foundation.
7 A. I don't recall. This was, again, their
8 preliminary negotiations and discussions.
9 BY MR. HAYES:
10 Q. Did you at any time undertake to find out
11 what type of business Zenergy was in?
12 A. Yes.
13 Q. Okay. And was that in connection with
14 your legal services that you provided to Paradigm
15 in connection with the Paradigm/Zenergy merger?
16 A. Yes.
17 Q. Okay. So what did you learn about
18 Zenergy's business?
19 A. Basically that it was involved in
20 biofuels.
21 Q. Okay. Did it seem strange to you that
22 Paradigm would merge with a company that was
23 engaged in biofuels?
24 A. Not at all.

Page 71
1 Q. That certainly wasn't Paradigm's business,
2 correct?
3 A. No.
4 Q. Okay. Did it seem odd to you that
5 Paradigm would be looking to merge with a company
6 that was engaged in biofuels five days after it
7 called off a merger with a company that was in the
8 business of selling health food?
9 A. I –
10 MR. ROSENBURG: Objection, form and
11 foundation.
12 A. I wasn't aware of that.
13 (Discussion held off the
14 record.)
15 MR. HAYES: This is a good time to take a
16 break. The tape is about to run out.
17 THE VIDEOGRAPHER: Off the record at
18 11:01 a.m.
19 (Recess taken from 11:01 a.m. to
20 11:08 a.m.)
21 THE VIDEOGRAPHER: Back on the record with
22 tape number two at 11:08 p.m.
23
24 BY MR. HAYES:

Page 72
1 Q. Ms. Dalmy, before we took a break, we
2 were looking at Plaintiff's Exhibit 25, which is
3 an email from Mr. Wilding to you and others
4 announcing the fact that Paradigm intended to
5 enter into a merger agreement with Zenergy
6 International.
7 A. Yes.
8 Q. Yes, okay. And Mr. Wilding says that
9 Paradigm would like to engage your services to
10 help put the deal together, correct?
11 A. Yes.
12 Q. Okay. In the email Mr. Wilding mentions
13 a number of things. In the middle of it he says
14 "Zenergy has requested an 80/20 split." What did
15 you understand that to mean?
16 MR. ROSENBURG: Objection, foundation.
17 A. I don't recall this email, but that
18 would be the reverse stock split. I don't know.
19 I really have no idea actually.
20 BY MR. HAYES:
21 Q. I thought before we broke you said you do
22 recall this email.
23 A. I mean, I received so many of these
24 emails. I recall emails of this general nature.

Page 73

1 I don't know if I recall this very
2 specific email dated March 24, 2009.
3 I recall the general nature of emails
4 regarding the structure or proposed structures.
5 Q. Okay.
6 A. So let me clarify that.
7 Q. So it says "Zenergy has requested an
8 80/20 split. Here is the breakdown that we have
9 verbally agreed upon. 514M issued and out."
10 Did you understand that to mean
11 514 million shares issued and outstanding?
12 A. I don't recall.
13 Q. "300M free trading through a debt to
14 equity conversion from PDGT's debt." Do you see
15 that?
16 A. Yes.
17 Q. What did you understand that to mean?
18 MR. ROSENBURG: Objection, foundation.
19 A. I don't recall. This to me it was merely
20 postulating.
21 BY MR. HAYES:
22 Q. Well, as you sit here today, I mean, this
23 is the kind of work that you do, right?
24 A. Yes. Uh-huh.

Page 74

1 Q. So the term issued and out, that's not
2 some foreign term to you?
3 A. No. It's issued and outstanding.
4 Q. Okay. Fair enough.
5 A. Uh-huh.
6 Q. And 300 million -- or 300M free trading,
7 again, that's not a foreign concept to you, is it?
8 A. No. No. It's just postulating what they
9 would like to see the structure.
10 Q. Right. And so that 300M free trading,
11 that refers to 300 million free trading shares,
12 correct?
13 A. Yes, it does.
14 Q. Okay.
15 MR. ROSENBURG: Objection, foundation
16 again.
17 You know, the question of whether she's
18 reading it today or whether she's surmising or
19 whether she has a recollection of reading it at
20 that time.
21 BY MR. HAYES:
22 Q. And it says "...through a debt to equity
23 conversion through Paradigm's debt." Do you see
24 that?

Page 75

1 A. Uh-huh.
2 Q. Is that a yes?
3 A. Yes.
4 Q. You understand that to mean that
5 Paradigm is going to convert some debt, some of
6 its debt, to equity, correct?
7 A. Yes. Uh-huh.
8 Q. Okay. And then "214M restricted/for
9 Zenergy." What did you understand that to mean?
10 MR. ROSENBURG: Objection, foundation.
11 A. Those would be the shares issued for the
12 transaction.
13 BY MR. HAYES:
14 Q. And that means that there would be
15 214 million shares of restricted stock issued
16 for Zenergy, correct?
17 A. Yes.
18 Q. Okay. And the 198 million or 198M free
19 trading -- do you know what? Strike that.
20 The next line says "198M free trading for
21 financing Zenergy..." Do you see that?
22 A. Yes.
23 Q. And what did you understand that to mean?
24 A. I have no idea.

Page 76

1 Q. All right. Let's -- 198M free trading,
2 that means 198 million free trading shares?
3 A. That does, yes.
4 Q. And you understood that?
5 A. Yes. As I read this now, yes.
6 Q. Okay. Do you think you wouldn't
7 understand -- you wouldn't have understood that
8 at the time?
9 MR. ROSENBURG: Objection, form and
10 foundation.
11 A. For financing Zenergy? I have no idea
12 what they're talking about there.
13 BY MR. HAYES:
14 Q. Okay. Let's move back. My question was
15 specifically as it relates to 198 million free
16 trading. Today as you read that, you certainly
17 understand that that refers to 198 million free
18 trading shares, correct?
19 A. Yes.
20 Q. Okay. At the time that you received
21 this email and were being asked to put this deal
22 together, Ms. Dalmy, you certainly understood what
23 198 million free trading meant, didn't you?
24 MR. ROSENBURG: Objection, form and

Page 77

1 foundation.
2 A. None of these terms or these numbers
3 actually resulted in the documentation. So
4 this was March. I don't believe I drafted any
5 share exchange agreement until May.
6 BY MR. HAYES:
7 Q. Okay. But that's not my question.
8 My question is in March of 2009 when you
9 received this email and were being asked by
10 Scott Wilding to put this merger deal together,
11 you understood at that time when he meant by
12 198Mfree trading?
13 MR. ROSENBURG: Objection.
14 A. No, I did not.
15 BY MR. HAYES:
16 Q. You did not?
17 A. No.
18 Q. Did you think that might have been an
19 impediment to your ability to put this deal
20 together?
21 MR. ROSENBURG: Objection, form,
22 foundation again.
23 A. No. It was pure preliminary posturing,
24 pure preliminary negotiations.

Page 78

1 BY MR. HAYES:
2 Q. Did you at that time in March 2008 try to
3 get an understanding from Mr. Wilding what he
4 meant by 198M free trading shares?
5 A. I don't recall.
6 Q. Okay. So that the statement 198M free
7 trading for financing Zenergy, et cetera, as you
8 sit here today, do you know what that means?
9 A. I don't know what he meant by that, no.
10 Q. Okay. And in March of 2009 did you have
11 an understanding of what he meant by that?
12 A. No.
13 Q. Okay. And at any time between now and
14 then, did you attempt to gain an understanding of
15 what he meant?
16 A. I don't recall. I don't recall if that
17 was an actual provision that was relevant to the
18 ultimate transaction. I don't --
19 Q. Well, it would be hard to know if it was
20 relevant or not, unless you actually tried to find
21 out what he meant, correct?
22 A. I don't recall. I don't recall.
23 Q. So the answer to my question is you don't
24 recall at any point between now and back in

Page 79

1 March of 2009 trying to get an understanding of
2 what Mr. Wilding meant by 190M -- "198M free
3 trading for financing Zenergy"?
4 A. No. I don't recall at all.
5 Q. And then it says "...to be held from a
6 nominee from Zenergy's side." Do you see that?
7 A. Yes.
8 Q. What did Mr. Wilding mean by that?
9 A. I --
10 MR. ROSENBURG: Objection, foundation.
11 A. -- have no idea.
12 BY MR. HAYES:
13 Q. Did you have any understanding back in
14 March of 2009 as to what Mr. Wilding may have
15 meant?
16 A. No.
17 Q. Did you ever use the term nominees in
18 connection with your work?
19 A. Rarely.
20 Q. Okay. Did you ever see that in
21 connection with the assignment of stock relating
22 to 144 opinions that you could --
23 A. Rarely.
24 Q. Okay. But you have seen it, correct?

Page 80

1 A. On occasion, but rarely.
2 Q. What do you understand the term nominee to
3 mean?
4 A. Basically to -- for those shares to be
5 housed in a brokerage account.
6 Q. Okay. But what does the term nominee mean
7 in that regard?
8 A. That the shares will be held by someone
9 else other than the actual entity or person to
10 whom the shares were being issued to.
11 Q. Okay. And the nominee is the person in
12 whose name the shares are held at the brokerage
13 account, correct?
14 A. Yes.
15 Q. Okay. But in actuality the shares are
16 beneficially owned by someone else; is that
17 correct?
18 A. Yes, by the shareholder of record.
19 Q. Okay. And in connection with your
20 issuance of Rule 144 opinions, is it important
21 for you to know whether or not an assignee of
22 shares is a nominee for the assignor?
23 A. No, because the shares are -- have always
24 been issued directly to that assignee.

Page 81

1 Q. Okay. So if – in connection with your
2 work issuing Rule 144 opinions, if the assignor
3 assigns shares to somebody who serves as the
4 assignor's nominee, that would be irrelevant to
5 you?
6 MR. ROSENBURG: Objection, calls for
7 speculation.
8 A. That hasn't occurred.
9 BY MR. HAYES:
10 Q. What hasn't occurred?
11 A. Where I see shares that are assigned to
12 an entity or a person, I always ask what do these
13 people do? Why are they getting shares? And it's
14 always for services provided to that particular
15 company.
16 So there's – I can't recall any
17 circumstance where those shares were issued to a
18 nominee.
19 BY MR. HAYES:
20 Q. But if you had learned facts to suggest
21 that the assignee of the shares was simply the
22 nominee of the assignor, that would be relevant
23 to you, correct?
24 MR. ROSENBURG: Objection, speculation.

Page 82

1 A. Yes, it would be relevant. I would look
2 into it.
3 BY MR. HAYES:
4 Q. It could affect whether or not you
5 could properly issue a Rule 144 opinion with
6 regard to –
7 A. Yes.
8 MR. ROSENBURG: Objection.
9 BY MR. HAYES:
10 Q. Because if the person – if the assignee
11 is serving as merely the nominee of the assignor,
12 there's really no distinction between the assignee
13 and assignor, correct?
14 MR. ROSENBURG: Objection, calls for
15 speculation.
16 A. That has never occurred in my practice.
17 BY MR. HAYES:
18 Q. But if it had occurred, my statement is
19 essentially correct?
20 A. I would be concerned about that, yes.
21 Q. And why would you be concerned?
22 A. Well, because the shares are being issued
23 to that shareholder of record for consideration.
24 Q. Well, if you had learned that let's say in

Page 83

1 this case that Bob Gasich had assigned shares to
2 somebody that was serving as his nominee, would
3 you have rule – issued a Rule 144 opinion letter
4 in connection with that assignment?
5 A. No –
6 MR. ROSENBURG: Objection, form and
7 foundation.
8 A. – I would not have. And those shares
9 were issued to those assignees as I was advised
10 and informed several times by Gasich that they had
11 performed services on behalf of Zenergy and needed
12 to be compensated.
13 BY MR. HAYES:
14 Q. And if it had happened where Mr. Gasich
15 assigned shares to somebody that served as his
16 nominee –
17 A. I would not have –
18 MR. ROSENBURG: Let him finish the
19 question.
20 BY MR. HAYES:
21 Q. – you would not have finished a Rule 144
22 opinion?
23 A. No. No.
24 MR. ROSENBURG: Let me finish my

Page 84

1 objection.
2 Objection, form and foundation.
3 BY MR. HAYES:
4 Q. And the reason you wouldn't have issued a
5 Form 144 opinion letter in that case is because
6 the assignment wouldn't qualify or wouldn't meet
7 the requirements of Rule 144, correct?
8 MR. ROSENBURG: Objection, form and
9 foundation.
10 A. Yes. That's correct.
11 BY MR. HAYES:
12 Q. Okay. In connection with your work on the
13 Zenergy/Paradigm merger, did you ever wonder why a
14 company that was in the biofuels industry would
15 want to merge with Paradigm?
16 A. That's quite common with reverse mergers.
17 Q. What is?
18 A. The nature of the business operation is
19 not relevant to the potential merger candidates.
20 If the nature of the business is similar or not,
21 it's not relevant.
22 Many times the reverse merger transactions
23 that I've worked on have involved entirely
24 separate industries.

Page 85

1 Q. Might it be a red flag, though, that the
2 merger is just a sham transaction?
3 A. Not at all.
4 MR. ROSENBURG: Objection to the form and
5 foundation.
6 A. Not at all.
7 BY MR. HAYES:
8 Q. What benefit did you understand that
9 Zenergy was getting by merging with Paradigm?
10 MR. ROSENBURG: Objection, foundation.
11 A. Becoming a reporting company as far
12 as having a market to trade shares on, having a
13 shareholder base.
14 BY MR. HAYES:
15 Q. So it was getting access to Paradigm's
16 publicly traded stock?
17 A. I wouldn't put it that way. It was
18 getting access to a venue and to shareholders
19 and to the opportunity to move the company
20 forward as a public company.
21 Q. Okay. Zenergy at the time was not a
22 public company, correct?
23 A. It was a private company.
24 Q. Okay. Paradigm was a public company,

Page 86

1 correct?
2 A. Yes.
3 Q. And as a result of the merger, Zenergy
4 was now able to have its shares traded publicly,
5 correct?
6 A. Yes. It became Paradigm, changed its name
7 and had a market.
8 Q. And what other benefit was there to
9 Zenergy as a result of this merger?
10 MR. ROSENBURG: Objection, foundation.
11 BY MR. HAYES:
12 Q. If any?
13 A. Those are typically the benefits.
14 Q. Okay. And what benefit was there to
15 Paradigm for this merger?
16 A. As Mr. Cammarata put it, the opportunity
17 for the company to succeed in future business
18 operations.
19 Q. How? How was merging with a biofuels
20 company that was private going to help Paradigm
21 succeed in its future business operations?
22 MR. ROSENBURG: Objection, foundation.
23 A. Because he was, as far as his explanation,
24 was unsuccessful in marketing his products. And

Page 87

1 he wanted to have a private company merge into
2 Paradigm to bring shareholder value as far as
3 assets, potential for revenues.
4 And this company, from what I had read and
5 understood, had great potential.
6 BY MR. HAYES:
7 Q. Did you save copies of any of the
8 press releases or public information that you
9 read?
10 A. I had no involvement in those press
11 releases.
12 Q. That's not my question.
13 You said you read press releases and other
14 information about the company, correct, about
15 Paradigm?
16 A. After the transaction. Those press
17 releases that you're referring to, I didn't read
18 them then.
19 I spoke to Gasich, Luiten maybe once or
20 twice, went to their website, understood the
21 general nature of their business, but that's a
22 business decision. That's not a legal decision.
23 Q. All right. Maybe I might have asked a
24 bad question. I want to clarify.

Page 88

1 I'm talking specifically about Paradigm.
2 A. Uh-huh.
3 Q. Prior to the merger transaction taking
4 effect, did you review any information or press
5 releases that had been issued about Paradigm to
6 understand its business?
7 A. I don't recall specifically, but I had a
8 general understanding of the business of Zenergy.
9 Q. And how did you get that general
10 understanding?
11 A. I'm sure researching whatever I saw on the
12 Internet --
13 Q. Okay.
14 A. -- and speaking with Gasich.
15 Q. Did you save any of the information?
16 A. No. No.
17 Q. Now, prior to the merger transaction
18 taking effect, did you review any information
19 about Zenergy?
20 MR. ROSENBURG: Can we go off the record
21 for a second?
22 MR. HAYES: Sure.
23 THE VIDEOGRAPHER: Off the record at
24 11:27 a.m.

Page 89

1 (Discussion held off the
2 record.)
3 THE VIDEOGRAPHER: Back on the record at
4 11:27 a.m.
5 MR. HAYES: Thank you.
6 BY MR. HAYES:
7 Q. So your counsel indicated we may have been
8 misunderstanding each other.
9 A. Okay.
10 Q. Before the merger transaction takes
11 effect, there's two separate companies?
12 A. Yes.
13 Q. One's called Paradigm?
14 A. Paradigm, uh-huh.
15 Q. And that's a public company. And the
16 other one is called Zenergy, and that's a private
17 company, correct?
18 A. Yes. Correct.
19 Q. Okay. At some point in February 2009,
20 you were retained by Paradigm to provide legal
21 services?
22 A. That's correct.
23 Q. All right. Between the time that you
24 were retained by Paradigm and up until the point,

Page 90

1 but before, the actual merger transaction between
2 Paradigm and Zenergy took place, did you do
3 anything to research or investigate Paradigm's
4 business?
5 A. Oh, yes. Yes.
6 Q. Okay. And what did you do?
7 A. I Googled and looked at press releases and
8 spoke with Mr. Cammarata numerous times.
9 Q. Okay. Did you save any of the research
10 for those press releases that you reviewed with
11 respect to Paradigm?
12 A. I don't recall.
13 Q. If you had saved them, you would have
14 produced them in this case, correct?
15 A. Not necessarily. They were in that box
16 that was destroyed in the flood in my house.
17 Q. Okay. So at some point there was a
18 flood in your house that destroyed a box of
19 documents and other information.
20 But at least with respect to a box of
21 documents that was destroyed, that contained
22 information pertaining to Zenergy and Paradigm?
23 A. Yes. That box completely included all of
24 the transactional documents.

Page 91

1 Q. All right. Fair enough. And so except
2 with respect to that document -- those documents
3 that may have been destroyed in the flood, if you
4 had any -- if you had saved -- strike that.
5 If you had saved research related to
6 Paradigm, would it have been in that doc- -- box?
7 A. Yes. It would have been, yes.
8 Q. Okay. Now, with respect to Zenergy, and,
9 again, I'm focusing on the time frame between when
10 you were retained to represent Paradigm and when
11 the merger between Paradigm and Zenergy actually
12 took place.
13 A. Uh-huh.
14 Q. During that period of time, did you do
15 any research to understand kind of the business of
16 Zenergy?
17 A. I don't recall, but my thoughts would have
18 been that's a business decision.
19 Q. Okay. So you don't recall whether you
20 did any research to understand the business of
21 Zenergy?
22 A. Between that as to the time of the merger,
23 probably right around the merger transaction being
24 consummated.

Page 92

1 Q. All right. Did you save any of that
2 research, if you did any?
3 A. I'm sure I printed it out. I do recall
4 having financial statements and -- I don't recall
5 what else, but I certainly researched the company.
6 Q. All right. And if you saved any of
7 that research, would it have been in that box
8 that was --
9 A. Yes.
10 Q. -- that was destroyed by the flood?
11 A. Yes.
12 MR. HAYES: Mark this as Plaintiff's
13 Exhibit 26, please.
14 (Plaintiff's Deposition Exhibit
15 No. 26 marked for
16 identification.)
17 BY MR. HAYES:
18 Q. Ms. Dalmy, if you could take a look at
19 Plaintiff's Exhibit 26 --
20 A. Uh-huh.
21 Q. -- which is a series of emails involving
22 Paradigm.
23 A. Uh-huh.
24 Q. And on the first page there, DAL000442,

Page 93

1 there's an email from Dan Ryan to you and
2 Scott dated May – dated March 25, 2009. And the
3 subject is "PDGT Bill." Do you see that?
4 A. Uh-huh.
5 Q. Is that a yes?
6 A. Yes. Sorry.
7 Q. Okay. The email from Mr. Ryan to you says
8 "Hi, Diane. Scott tells me you are angry with
9 me."
10 Do you recall getting this email from
11 Mr. Ryan?
12 A. No, I don't recall.
13 Q. All right. In the second sentence he says
14 "I did tell you I would arrange for you to get
15 paid on PDGT for the merger with NS." Do you see
16 that?
17 A. Yes.
18 Q. Okay. NS refers to Naturally Splendid;
19 is that right?
20 MR. ROSENBURG: Objection, foundation.
21 A. I would presume.
22 BY MR. HAYES:
23 Q. Okay. Do you recall Mr. Ryan telling you
24 that he would arrange for you to get paid on the

Page 94

1 Paradigm merger with NS?
2 A. Not at all.
3 Q. Okay. Did you get compensated at all?
4 Did you actually receive any compensation
5 in connection with the Paradigm's negotiations of
6 a merger with Naturally Splendid?
7 A. No. I was attempting to obtain a
8 retainer.
9 Q. For what?
10 A. For my engagement with -- for my services
11 for Paradigm irrespective of what company they
12 were going to ultimately merge with.
13 Q. Do you remember providing any services
14 in connection with the merger negotiations with
15 Naturally Splendid?
16 A. No, I don't recall.
17 Q. Do you recall sending Mr. Ryan a bill
18 or --
19 A. No.
20 Q. -- preparing any bill with respect to
21 your legal services provided in connection with
22 the merger with Naturally Splendid?
23 A. No.
24 Q. He says "The merger did not go through but

Page 95

1 I will assume the debt and pay you." Do you know
2 what debt he's referring to?
3 A. My legal fees.
4 Q. Okay. And so my question is what legal
5 fees did you have?
6 A. I didn't. I was looking for a retainer.
7 Q. When you got this email or after you got
8 this email from Mr. Ryan, did you call him up and
9 say look, you know, I don't have any legal fees?
10 MR. ROSENBURG: Objection, foundation.
11 A. I don't recall. I was looking for a
12 retainer.
13 I had an engagement letter, and I wanted
14 a retainer for all of the work that I was doing
15 and was going to do in connection with Paradigm.
16 BY MR. HAYES:
17 Q. Down towards the bottom of this email he
18 says "I always send you clients when I can and I
19 always make sure you get paid." Do you see that?
20 A. Yes.
21 Q. Does Mr. Ryan typically send you clients?
22 A. No. As you refreshed my memory, ABV Gold
23 with PharmaCom Biovet was referred by him and then
24 Paradigm. I don't recall any others.

Page 96

1 Q. And he says "I always make sure you get
2 paid." Do you see that?
3 A. Yes.
4 Q. Is that true?
5 A. I hear that statement many times from many
6 clients, so no, it's not true.
7 Q. Did you call up Mr. Ryan after you got
8 this email and say anything to him?
9 Well, first of all, you don't always make
10 sure I get paid?
11 MR. ROSENBURG: Objection, foundation.
12 A. I don't recall.
13 BY MR. HAYES:
14 Q. Okay. And he says "I will call you
15 tomorrow to resolve this bill." Do you see that?
16 A. Yes.
17 Q. Okay. Again, did you send him a bill?
18 A. No.
19 Q. Did you call Mr. Ryan up and ask him what
20 he was referring to?
21 A. I don't recall.
22 Q. And so that was with respect -- that
23 email was with respect to the merger between
24 Paradigm and Naturally Splendid.

Page 97

1 Did you -- with respect to the merger
2 between Paradigm and Zenergy, did you have an
3 agreement with respect to compensation in
4 connection with the legal services you were
5 going to provide on that engagement?
6 A. I had an engagement letter, but -- I had
7 an engagement letter.
8 Q. Okay. What were the terms, as you
9 understood it -- how were you going to be paid in
10 connection with -- what was your understanding as
11 to how you were going to be paid in connection
12 with your work?
13 A. Cash.
14 Q. And how were you going to bill for your
15 services? Was it a flat fee, hourly?
16 A. I believe the engagement letter provided
17 for hourly, but when the engagement letter was
18 drafted, I didn't know the extent of my services.
19 Q. Okay. But, as you understood it, it was
20 originally you were expecting to be paid on an
21 hourly basis?
22 A. Yes. Initially my engagement was
23 corporate work.
24 Q. Okay. For which you were going to be paid

Page 98

1 on an hourly basis?
2 A. Yes.
3 Q. Were you offered -- as an alternative to
4 being paid on an hourly basis with cash, were
5 you originally offered an opportunity to receive
6 shares?
7 A. Not at all.
8 Q. When is the first time that you recall
9 being -- strike that.
10 At some point in time in connection with
11 your work on the Paradigm/Zenergy merger, were you
12 offered the opportunity to receive shares?
13 A. I believe it came up early May because I
14 was constantly asking for payment.
15 Q. And you hadn't been paid?
16 A. No.
17 Q. Do you recall receiving any money as
18 payment for your legal services in connection with
19 the Zenergy/Paradigm merger?
20 A. No, I don't recall receiving any money.
21 MR. HAYES: Mark this as Plaintiff's
22 Exhibit 27, please.
23
24 (Plaintiff's Deposition Exhibit

Page 99

1 No. 27 marked for
2 identification.)
3 BY MR. HAYES:
4 Q. All right. Ms. Dalmy, please take a look
5 at Plaintiff's Exhibit 27, which is an email from
6 Scott Wilding to you dated March 27, 2009. Do you
7 see that?
8 A. Yes, I do.
9 Q. Okay. And March 27, 2009, is two days
10 after you were first informed -- I'm sorry.
11 Strike that.
12 It was three days after you were first
13 informed by Mr. Wilding of the Zenergy/Paradigm
14 merger, correct?
15 A. Yes. That's the date.
16 Q. Okay. And Mr. -- first of all, do you
17 recall receiving this email from Mr. Wilding?
18 A. No, I don't.
19 Q. Do you have any reason to believe that you
20 didn't receive it from Mr. Wilding?
21 A. No, I don't.
22 Q. Diane, first of all -- strike that.
23 The subject says "Zenergy Inc., and my
24 offer to you." Do you see that?

Page 100

1 A. Yes.
2 Q. Then it says "Diane, here's some
3 information on our deal. It's simple tremendous.
4 My offer to you if you accept is 4M of the debt to
5 equity shares from my end of the 34M." Do you see
6 that?
7 A. Yes.
8 Q. And so when you got this email, is it fair
9 to say you understood that what he was saying
10 there --
11 A. Oh, yes. I would have, yes.
12 Q. And what did you understand him to be
13 saying?
14 MR. ROSENBURG: Objection, foundation.
15 A. To accept shares in lieu of cash payment,
16 which I never do and never had done.
17 BY MR. HAYES:
18 Q. Okay. So despite what you said earlier,
19 it's fair to say that very early on in this
20 transaction Mr. Wilding offered you shares in
21 connection with the legal services that you were
22 going to provide for the Paradigm/Zenergy merger?
23 A. I don't recall this email. I recall that
24 nature of discussion starting in April.

Page 101

1 Q. Okay. But despite your recollection as
2 you look at this email, it's pretty clear that --
3 A. Yes.
4 Q. -- early on in this transaction he's
5 offering you 4 million shares for your work,
6 correct?
7 A. Yes.
8 Q. Okay. And, in fact, ultimately you did
9 accept 4 million dollars -- 4 million shares as
10 part of the merger or -- yes, as part of the
11 merger between Paradigm and Zenergy?
12 A. It -- I -- it ended up resulting in my
13 acceptance at the end of the transaction when
14 there was no cash to pay me.
15 Q. And then he says in his email "The
16 attachment is Zenergy's BP and below are a
17 few press releases that will be coming out after
18 we're public." Do you see that?
19 A. Yes.
20 Q. Did it surprise you at all or concern
21 you at all that three days after he announces to
22 you that there's going to be a merger agreement
23 between -- or they're working on a merger
24 agreement between Paradigm and Zenergy, that

Page 102

1 there's already press releases being prepared?
2 MR. ROSENBURG: Objection, foundation.
3 A. I don't recall this email. I didn't look
4 at any of these press releases. I was not counsel
5 to Zenergy.
6 So Zenergy was a private company. It was
7 operational. What they did with their press
8 releases is -- was their business.
9 BY MR. HAYES:
10 Q. But you were counsel to Paradigm, correct?
11 A. Yes.
12 Q. Okay. And, actually, if you look at these
13 press releases that he's referencing, the first
14 one, number one there, says "Zenergy Acquires
15 3 Million Gallon Biodiesel Facility," correct?
16 A. Yes.
17 Q. And what that really is is a reference to
18 the fact that Paradigm is acquiring Zenergy and
19 would later -- which is a biodiesel company, and
20 would later change its name to Zenergy, right?
21 A. No.
22 MR. ROSENBURG: Objection, form and
23 foundation.
24 A. This is in March. We didn't consummate

Page 103

1 this transaction, which had a considerable amount
2 of due diligence on the part of both parties,
3 until, what, late -- very late May.
4 What Zenergy issued as far as press
5 releases was irrelevant to me. It was a private
6 company. I was not counsel.
7 BY MR. HAYES:
8 Q. But this email is saying that these are
9 the press releases that are going to be coming
10 out after we're public, right?
11 A. I don't recall this email, and I had
12 no role in preparation or review of any press
13 releases.
14 Q. So you didn't have any role in the
15 preparation of any of the press releases?
16 A. None whatsoever.
17 Q. You are absolutely certain?
18 A. I am absolutely positive. I had no
19 role in any of those press releases. I had
20 no participation in drafting any of those press
21 releases. And I probably gave little thought to
22 these press releases that he's listing here. I
23 don't recall this email at all.
24 MR. HAYES: Can I see the answer to -- the

Page 104

1 last answer.
2 BY MR. HAYES:
3 Q. So when you say you didn't have any
4 role whatsoever in the preparation of press
5 releases, are you referring both to press releases
6 by Zenergy and press releases by Paradigm?
7 A. I am most definitely referring to Zenergy.
8 With regards to Paradigm I don't recall reviewing
9 any press releases.
10 But I certainly make it a practice with my
11 companies that issue press releases that they send
12 them to me, because my legal advice is that I
13 insist that every statement in a press release has
14 support. And so I -- not all of my clients do
15 that, but I do request that I review press
16 releases.
17 I don't recall reviewing any press
18 releases of Paradigm's.
19 Q. Do you recall participating in the
20 preparation of any Paradigm press releases?
21 A. Not at all. No.
22 Q. Did you participate?
23 A. No, I did not.
24 Q. Are you sure?

Page 105

1 A. To the best of my recollection, yes, I am
2 sure.
3 MR. HAYES: Would you mark this as
4 Plaintiff's Exhibit 28.
5 (Plaintiff's Deposition Exhibit
6 No. 28 marked for
7 identification.)
8 BY MR. HAYES:
9 Q. Look at Plaintiff's Exhibit 28, which is
10 Bates labeled DAL185. It's a couple of emails.
11 The top one is from Scott Wilding to you dated
12 4/19/2009. Do you see that?
13 A. Yes.
14 Q. And the subject line is PDGT news.
15 "PDGT news...add this into what" -- and it
16 says "Dinae," D-i-n-a-e, "wrote? Something like
17 this."
18 A. Yes.
19 Q. Okay. Do you understand that reference
20 to Dinae, D-i-n-a-e, is really just a reference to
21 you, Diane, and he transposed the A and N?
22 MR. ROSENBURG: Objection, foundation.
23 A. Yes.
24 BY MR. HAYES:

Page 106

1 Q. Okay. So then if you look below that
2 is an email from Scott Wilding to somebody at the
3 email address [redacted]. Do you see
4 that?
5 A. Yes.
6 Q. And that [redacted], that's
7 Robert Gasich's email, correct?
8 A. Yes.
9 Q. And, again, the subject line is
10 "PDGT news...add this into what Diane wrote?
11 Something like this."
12 And then it's a reference basically
13 to a change in ownership by Paradigm relating to
14 the possible merger with Zenergy, correct?
15 A. Yes.
16 Q. All right. So in this email Mr. Wilding
17 is saying that you wrote something in connection
18 with this news release. Do you see that?
19 MR. ROSENBURG: Objection, form and
20 foundation.
21 A. I see that in the subject line.
22 BY MR. HAYES:
23 Q. And is -- are you saying that's
24 inaccurate?

Page 107

1 A. I believe so, yes.
2 Q. Okay. Did you contact Mr. Wilding and say
3 Scott, what are you talking about? I didn't write
4 anything for a news release.
5 MR. ROSENBURG: Objection, foundation.
6 A. When I went through my hard drive, I gave
7 everything to the SEC. And I don't recall seeing
8 any press releases which I would have saved on my
9 hard drive. I don't recall drafting any press
10 release.
11 Possibly I might have offered advice on a
12 press release, but I don't recall seeing this.
13 And if I had, I certainly would have had revisions
14 to this. I don't recall this at all.
15 BY MR. HAYES:
16 Q. Okay. Do you recall making any -- you
17 obviously got this email from Scott Wilding --
18 A. Yes.
19 Q. -- on 4/19/2009, correct?
20 A. Yes.
21 Q. Okay. Did you in response to his email
22 sending this to you, did you make revisions to
23 this?
24 MR. ROSENBURG: Objection, form and

Page 108

1 foundation.
2 A. I don't recall this email.
3 BY MR. HAYES:
4 Q. I mean, an email saying that you
5 prepared something for a press release that you
6 didn't -- say you didn't prepare, doesn't that
7 seem like something that would stand out to you?
8 MR. ROSENBURG: Objection, form and
9 foundation and mischaracterizes what the email
10 says.
11 A. I don't -- I don't recall preparing any
12 press release whatsoever for Paradigm. It is
13 inaccurate, as far as I'm concerned, as to what is
14 in his subject line.
15 At a minimum I might have sent an email
16 generally talking about a press release. I don't
17 recall. I don't recall this press release, nor
18 do I recall this email.
19 BY MR. HAYES:
20 Q. Did you prepare a letter of intent or
21 memorandum of understanding in connection with
22 the Zenergy/Paradigm merger?
23 A. I don't recall.
24 Q. So it's possible that you did and you just

Page 109

1 don't recall?
2 A. Many times I will prepare MOUs or
3 letters of intent, but I don't recall for this
4 transaction.
5 Q. Did Mr. Wilding or Ryan or anybody else
6 send you cash for a retainer in connection with
7 the -- your legal work for Paradigm?
8 A. No. I don't recall receiving any
9 retainer.
10 MR. HAYES: Would you mark this as
11 Plaintiff's Exhibit 29, please. Thank you.
12 (Plaintiff's Deposition Exhibit
13 No. 29 marked for
14 identification.)
15 BY MR. HAYES:
16 Q. Ms. Dalmy, Exhibit 29 is an email from
17 Scott Wilding to Dan Ryan and cc-ing you dated
18 March 28, 2009.
19 And then below that is an email from
20 you to Dan Ryan and Scott Wilding dated March 18,
21 2009. Do you see that?
22 A. Yes.
23 Q. Okay. The email below or the email
24 from you to Mr. Ryan dated March 18, 2009,

Page 110

1 says "Dan - hope all is well. With regards to
2 a telephone conversation I just had with Scott,
3 he asked that I send you an email reminding you
4 re retainer of $2,000 for legal fees associated
5 with" PT -- "PTDG." Do you see that?
6 A. Yes.
7 Q. And then you provide the wiring
8 instructions for your bank.
9 And then above that Mr. Wilding on
10 March 28th sends an email to Mr. Ryan "Hi, Dan.
11 Please take care of this for Diane on Monday so
12 we can move forward." Do you see that?
13 A. Yes.
14 Q. Okay. Did you have an understanding
15 with Mr. Ryan and/or Mr. Wilding that you were to
16 receive a retainer of $2,000 for legal services
17 provided to Paradigm?
18 A. I was actually asking for a retainer of
19 10,000.
20 Q. Okay. But your email here says 2,000,
21 correct?
22 A. I don't recall receiving 2,000. I don't
23 recall this email, but it appears that I was
24 trying to get something.

Page 111

1 Q. And that something in this email is 2,000?
2 A. Is 2,000, yes.
3 Q. Do you recall whether you actually
4 received this $2,000?
5 A. I don't recall. I don't believe so.
6 Q. Do you recall whether you received any
7 money for a retainer?
8 A. No. I don't recall that I received any
9 money for a retainer.
10 MR. HAYES: Mark this as Plaintiff's
11 Exhibit 30, please.
12 (Plaintiff's Deposition Exhibit
13 No. 30 marked for
14 identification.)
15 BY MR. HAYES:
16 Q. Ms. Dalmy, if you take a look at
17 Plaintiff's Exhibit 30, it's a series of emails
18 involving you and Mr. Wilding.
19 And on the first page there, DAL376, the
20 second email on the page is an email from you to
21 Mr. Wilding dated May 28, 2009, at 11:50 a.m. And
22 the subject line is "PDGT/Zenergy," do you see
23 that?
24 A. Yes.

Page 112

1 Q. And it says Scott -- and this is you
2 writing. "Scott - I will start working on it.
3 Let me ask you this - I know that I received a
4 $1500 retainer (which was used up a LONG time ago
5 regarding share exchange agreement, Delaware SOS,
6 amendment to articles, et cetera.)" Do you see
7 that?
8 A. Yes.
9 Q. Okay. Does that refresh your recollection
10 that you did, in fact, receive a $1500 retainer
11 in connection with the legal services you were
12 providing to Paradigm?
13 A. I don't recall receiving that retainer,
14 but based on this email, it is confirming that
15 I did receive some payment.
16 Q. Okay. And then above, excuse me, it looks
17 like you're asking for more legal fees -- I'm
18 sorry. Let me strike that.
19 Below that is an email from Mr. Wilding to
20 you earlier in the day on May 28, 2009, in which
21 he says "Dear Diane, All the assignments will be
22 signed and faxed back today. Knowing that you're
23 leaving soon, could you please let us know when
24 you will send the TA all of the paperwork and your

Page 113

1 legal opinion to allow them to DWAC," D-W-A-C,
2 "the said shares after the reverse split. What's
3 the time frame on this process?" Do you see that?
4 A. Yes, I do.
5 Q. Now, is that email to you from
6 Mr. Wilding in reference to the Rule 144
7 legal opinion that you were going to be providing
8 in connection with the assignment of the shares
9 following the merger?
10 MR. ROSENBURG: Objection, foundation.
11 A. Yes, it is.
12 BY MR. HAYES:
13 Q. Okay. And so your next email, your
14 response to Mr. Wilding is that look, I've already
15 received a retainer of $1500, which was used a
16 long time ago, right?
17 A. Apparently I did receive -- which I don't
18 recall -- a very small portion of a payment, yes.
19 Q. Okay. And now you're asking in that
20 email for whether you're going to get paid more
21 money for providing these opinion letters?
22 A. Well, more money in terms of my overall
23 fee, which was around 30 to 35,000, that they
24 owed me.

Page 114

1 And if this is dated May 28th, I was
2 coming to the realization that I was never going
3 to get paid and very upset about that.
4 Q. But in your email you say "But should I
5 ask Dan for additional fee to cover the opinion
6 letters?" Do you see that?
7 A. Uh-huh.
8 Q. Is that a yes?
9 A. Yes, it is.
10 Q. And so what you're asking there is -- what
11 you're saying to Mr. Wilding is that look, if
12 you want me to provide these opinion letters in
13 connection with the assignment of shares following
14 the merger, I'd like to get paid for that,
15 correct?
16 A. Yes. And I wasn't certain who was going
17 to be paying for those opinions.
18 Q. Right. And so at this point, though,
19 however, you had received $1500?
20 A. Apparently so. I acknowledge that in this
21 email. I don't recall that.
22 Q. And you knew at this point in time on
23 May 28th that you were also going to be receiving
24 the 4 million shares, correct?

Page 115

1 A. According to this email, yes. I probably
2 came to the realization by May 28th that all of
3 the services that I had been providing were going
4 to go uncompensated.
5 Q. So by May 28th -- certainly by May 28,
6 2009, you know that as part of this merger
7 Paradigm transaction and the work that you're
8 providing on it, you're going to receive 4 million
9 shares from this transaction?
10 A. That was how I was going to get paid. And
11 they knew that I was not happy with that.
12 Q. And then up above that in response to
13 your email, Mr. Wilding is offering to wire you
14 $1,000 to compensate you for providing the opinion
15 letters, correct?
16 A. No. I don't recall that. I don't recall
17 if I ever received that wire, but it would have
18 been payment towards the huge amount of legal fees
19 that had accrued.
20 Q. Okay. But you don't say that in your
21 email.
22 What your email says is should I ask
23 Dan for additional fees to cover the opinion
24 letters, correct?

Page 116

1 A. Meaning were the shareholders -- or the
2 assignees going to pay for these opinion letters.
3 I didn't know who to bill for the opinion letters.
4 Q. Right. So he responds and says "I left
5 you 2 voice mails on each of your numbers. Dan is
6 wiring me 5,000 today to take care of some bills
7 of mine. I can wire you 1,000 tomorrow, is this
8 okay? "
9 A. Well, I said then "I am really out on
10 legal fees on this."
11 He was quite aware of the amount of
12 legal fees that had accrued. And so any small
13 amount of 1,000 was going to go towards, if he
14 did wire that, going to go towards payment of this
15 large balance due and owing.
16 Q. In any event, in response to your email,
17 he's offering to pay you $1,000?
18 A. I was always asking for payment, so yes,
19 he was offering that.
20 Q. Okay. And he says in his email
21 "We're almost there and wouldn't want any delays,
22 especially now. We're golden once the shares hit
23 our accounts, payday is right around the corner."
24 Do you see that?

Page 117

1 A. Yes, I do.
2 Q. Okay. And so what he's referring to
3 there, as you understood it, was that the merger
4 deal is almost complete?
5 A. Uh-huh.
6 Q. Once it's completed you and I are going to
7 be getting shares as a result of the merger, and
8 we're going to make money as a result of that,
9 correct?
10 MR. ROSENBURG: Objection, foundation.
11 A. Typically, no, because --
12 BY MR. HAYES:
13 Q. My question is not typically.
14 A. Okay. No.
15 Q. That's not what you understood him to
16 mean?
17 A. No.
18 Q. Okay. When he says "we're golden once the
19 shares hit our account, payday is right around the
20 corner," what did you understand that to mean?
21 A. False promises.
22 MR. ROSENBURG: Objection, foundation.
23 A. False promises. I have never accepted
24 shares before, and I figured I would be papering

Page 118

1 that certificate to the wall.
2 BY MR. HAYES:
3 Q. Okay. But you've at this point by
4 May 28th had already agreed to accept shares?
5 A. I had no alternative.
6 Q. Okay.
7 A. There was no money.
8 Q. But you did agree to it?
9 A. Yes. I was furious. And that's why these
10 little small incremental amounts, anything I could
11 get.
12 I had accrued fees of at least $35,000.
13 And I -- that's why he says we "...wouldn't want
14 any delays, especially now." He knew I was
15 furious.
16 Q. All right. So when he says to you
17 "We're golden once the shares hit our accounts,
18 payday is right around the corner," what did you
19 understand him to be telling you?
20 MR. ROSENBURG: Objection, foundation.
21 A. Pure hype.
22 BY MR. HAYES:
23 Q. Okay.
24 A. And I was upset.

Page 119

1 Q. What was the type that he was telling you?
2 Whether you believed it to be true or not,
3 what did you understand him to be telling you?
4 MR. ROSENBURG: Objection, foundation.
5 A. That supposedly I would be able to
6 compensate myself from these shares, which I
7 thought was not true.
8 BY MR. HAYES:
9 Q. Okay. Because supposedly after the
10 merger, the share price would increase?
11 MR. ROSENBURG: Objection, form and
12 foundation.
13 A. I had no knowledge of that.
14 BY MR. HAYES:
15 Q. Okay.
16 A. I had never accepted shares before for
17 that very reason, because all of my clients think
18 their companies are going to be the home run. I
19 put no faith in what he said in this statement.
20 Q. Whether or not you put faith in it, you
21 understood what he was saying to you was that once
22 we get shares, we're going to be able to make
23 money off of these shares?
24 MR. ROSENBURG: Objection, foundation.

Page 120

1 She hasn't testified she had any understanding.
2 A. I don't know what he meant by that. It's
3 hype to me. It's a false promise to me. It's
4 trying to entice me to take shares instead of the
5 cash, the legal fees that I wanted to be paid.
6 BY MR. HAYES:
7 Q. And what did you -- as part of that false
8 promise, what did you understand him to be saying
9 as to -- he was trying to convince you it take
10 shares.
11 A. Right.
12 Q. Which you had already done.
13 What was the benefit to you of taking
14 shares?
15 MR. ROSENBURG: Objection.
16 BY MR. HAYES:
17 Q. What did you understand him to be
18 conveying to you as the benefit of taking shares?
19 MR. ROSENBURG: Objection, form and
20 foundation. There's lots of questions there.
21 A. I saw no benefit to taking shares.
22 BY MR. HAYES:
23 Q. I'm not asking what you saw.
24 What did you understand him to be telling

Page 121

1 you was the benefit?
2 MR. ROSENBURG: Once again, objection,
3 foundation.
4 A. That there would be a benefit, but...
5 BY MR. HAYES:
6 Q. What was that benefit?
7 A. To be able to sell these shares and
8 compensate myself.
9 Q. Do you recall if Mr. Wilding ever sent you
10 the $1,000?
11 A. No. I don't recall that he did send that
12 to me.
13 Q. Do you recall receiving it or being -- by
14 wire transfer?
15 A. I don't recall at all.
16 Q. Do you recall whether you received it
17 through Western Union?
18 A. I don't recall receiving any payment.
19 Q. Okay. Do you recall ever receiving
20 payment from Mr. Wilding via Western Union?
21 A. No. Uh-uh.
22 MR. HAYES: Would you mark this as
23 Plaintiff's Exhibit 31, please.
24 (Plaintiff's Deposition Exhibit

Page 122

1 No. 31 marked for
2 identification.)
3 (Discussion held off the
4 record.)
5 BY MR. HAYES:
6 Q. Ms. Dalmy, if you could take a look at
7 what's been marked Plaintiff's Exhibit 31, and let
8 me know if you recognize it.
9 A. Yes, I do.
10 Q. Okay. What is Plaintiff's Exhibit 31?
11 A. It's my initial engagement letter.
12 Q. And it's addressed -- it's dated April 1,
13 2009, correct?
14 A. Correct.
15 Q. And it's addressed to Mr. Robert Gasich,
16 president, chief executive officer, Paradigm
17 Tactical Products, Inc. Do you see that?
18 A. Yes. And that's an error.
19 Q. What's an error?
20 A. Mr. Robert Gasich. It should have been
21 Mr. Vincent Cammarata.
22 Q. Okay. Why did you -- why do you think
23 you made the error and addressed it to
24 Mr. Robert Gasich?

Page 123

1 A. I don't know.
2 Q. Do you recall whether you ever received a
3 signed copy of this engagement letter back from
4 either Mr. Gasich or Mr. Cammarata?
5 A. No, I don't recall.
6 Q. And does this letter set forth the
7 initial terms, as you understood them, of your
8 engagement by Paradigm to provide legal services
9 in connection with the Paradigm/Zenergy merger?
10 A. Generally. I had already been providing
11 services since February.
12 And I'm not sure at the time I was
13 drafting this that I knew of the extent or -- of
14 my legal services or that it would -- yes, I
15 probably did, as far as a reverse merger.
16 Q. You certainly knew by April 1, 2009 --
17 A. Yes. Yes.
18 Q. -- that Zenergy and Paradigm were
19 negotiating a merger, correct?
20 A. Yes.
21 MR. HAYES: Mark this as Plaintiff's
22 Exhibit 31 -- or 32, please.
23
24 (Plaintiff's Deposition Exhibit

Page 124

1 No. 32 marked for
2 identification.)
3 BY MR. HAYES:
4 Q. Ms. Dalmy, if you take a look at
5 Plaintiff's Exhibit 32, it's an email from
6 Mr. Wilding to you dated 4/1/2009. And it's got a
7 Bates label on it DAL223. Do you see that?
8 A. Yes.
9 Q. Okay. Do you recall this email?
10 A. No, I don't recall this email.
11 Q. Do you have any reason to believe you
12 didn't receive it?
13 A. No.
14 Q. The top -- the first line of the email
15 states "Next drafting that settlement agreement
16 between Dan Orordan and company and issuance of
17 shares. Do we have the terms finalized?"
18 And then below that it says "Diane,
19 didn't we nix this? This is the debt that we
20 cannot use/convert. We're using Zenergy's debt to
21 convert."
22 Do you see that?
23 A. Yes, I do.
24 Q. Okay. When Mr. Wilding wrote "Next

Page 125

1 drafting that settlement agreement between
2 Dan Orordan and company and issuance of shares,"
3 what was he referring to?
4 MR. ROSENBURG: Objection, foundation.
5 She said she doesn't recall this.
6 A. I do recall drafting settlement agreements
7 that I worked with Mr. Cammarata because Paradigm
8 owed moneys to certain people, I believe this
9 Dan, whoever he is, Orordan was one of them.
10 And there were -- this was part of some
11 of the legal services I provided was drafting
12 settlement agreements that I gave to
13 Mr. Cammarata.
14 BY MR. HAYES:
15 Q. Between -- settlement agreements between
16 Paradigm and people like Dan Orordan?
17 A. Yes.
18 Q. Okay. Was Dan Orordan a shareholder in
19 Paradigm?
20 A. I don't know. It was going -- it was a
21 settlement agreement between Dan and Paradigm with
22 regards to either services that he rendered that
23 went uncompensated or moneys that he loaned. I
24 don't recall.

Page 126

1 Q. All right. And then it says below that it
2 says "Diane, didn't we nix this? This is the debt
3 we cannot use/convert. We're using Zenergy's debt
4 to convert."
5 What did he mean by that?
6 MR. ROSENBURG: Objection, foundation.
7 A. I don't know, because Scott was not
8 involved in these settlement agreements, and
9 this doesn't even make sense.
10 BY MR. HAYES:
11 Q. Was there a point in time, to your
12 knowledge, that the parties were considering
13 using Paradigm debt to convert to free trading
14 shares?
15 A. When I had initial discussions with
16 Scott and Mr. Cammarata, these discussions focused
17 on the overall strategy and structure as far as a
18 share exchange agreement, basically perhaps a
19 stock purchase agreement, the overall structure of
20 the traction, which also then included convertible
21 debt.
22 Many times a convertible debt is a
23 feature of these transactions, such as a reverse
24 stock split also. On finalizing liabilities,

Page 127

1 settlement agreements, that's part of it.
2 So as far as any discussions with
3 regards to conversion of debt, my two points were
4 that absolutely the debts evidenced on financial
5 statements and its nonaffiliate debt.
6 So I have no idea what he's referring to
7 in this email, because I drafted probably two to
8 three, as I recall, settlement agreements at the
9 request of Mr. Cammarata with respect to creditors
10 of Paradigm, and those would have been for
11 restricted stock.
12 Q. Okay. My question was a little bit
13 different.
14 My question was to your knowledge at any
15 point in time were the parties considering using
16 Paradigm's debt to convert to free trading shares
17 in connection with the Zenergy/Paradigm merger?
18 A. I don't know. My discussion with them
19 was those two points with regards to convertible
20 debt.
21 Q. Okay. And so your answer to my question
22 is you don't know whether at any time they were
23 considering using Paradigm debt to convert to
24 free trading shares?

Page 128

1 A. I don't know what debt they were
2 considering. I merely set forth the two factors
3 that I believed were critical.
4 Q. So when Mr. Wilding writes to you
5 "This is the debt that we cannot use/convert.
6 We're using Zenergy's debt to convert," you have
7 no idea what he's talking about?
8 A. No, I did not.
9 Q. Okay.
10 A. And I don't now.
11 Q. As you sit here today, you don't know what
12 that means?
13 A. No, I don't.
14 Q. As you sit here today, do you have an
15 understanding one way or the other whether at some
16 point in time during this merger negotiation the
17 parties were considering using Paradigm debt to
18 convert to free trading shares?
19 A. I know they were looking for aged debt in
20 order to compensate individuals who had provided
21 services to Zenergy.
22 Whose debt, what company's debt I don't
23 know what they were considering. That was part of
24 their discussions that I didn't necessarily

Page 129

1 participate in.
2 Q. You understood they were looking for
3 aged debt?
4 A. Yes.
5 Q. But you didn't have an understanding as
6 to where they were looking?
7 A. Right. And I understood because that's a
8 common aspect of small developmental companies in
9 order to compensate people who have provided
10 services.
11 And my point was that, again, it is
12 nonaffiliate debt, and it is aged debt and
13 evidenced on financial statements. That was
14 a very big criteria of mine. Important.
15 MR. HAYES: Could you mark this as
16 Plaintiff's Exhibit 33.
17 (Plaintiff's Deposition Exhibit
18 No. 33 marked for
19 identification.)
20 BY MR. HAYES:
21 Q. Ms. Dalmy, if you take a look at
22 Plaintiff's Exhibit 33, it's an email from
23 Scott Wilding to you dated April 10, 2009. It's
24 got a Bates label of DAL408. Do you see that?

Page 130

1 A. Yes, I do.
2 Q. All right. The subject line of the
3 email -- and there's really nothing else to it,
4 but the subject line says "control block is on its
5 way via fed-x to Vinny right now." Do you see
6 that?
7 A. Yes, I do.
8 Q. Do you understand that the reference to
9 Vinny is to Vinny Cammarata?
10 A. Yes.
11 MR. ROSENBURG: Objection, foundation.
12 BY MR. HAYES:
13 Q. Okay. What did you understand Mr. Wilding
14 to mean to you when he says "control block is on
15 its way via fed-x to Vinny right now"?
16 MR. ROSENBURG: Objection, foundation.
17 A. During March there were discussions
18 between Mr. Cammarata and myself regarding all
19 of the time and services and effort that he had
20 put into this company as CEO and president and
21 director, and it was uncompensated.
22 So he asked how he could get compensated,
23 if he could get compensated by issuance of
24 shares.

Page 131

1 And I recall having this discussion with
2 him explaining to him that yes, you can do that,
3 explaining to him that it's important as far as
4 being the CEO and president that he has control as
5 far as over this company with regards to
6 shareholder approval.
7 So we talked about the issuance of shares
8 to himself as compensation for the past year and a
9 half, 2 years of all of this time that he had put
10 into the company uncompensated.
11 And I told him that he had a fiduciary
12 duty with regards to issuance of these shares,
13 that he had a fiduciary duty with respect to
14 maximizing the highest per-share price for
15 issuance, and that he had a potential conflict of
16 interest because he was a sole member of the board
17 of directors.
18 And, therefore, I felt it necessary that
19 in his board resolution, I believe I provided him
20 with a draft that he also include whereas clauses
21 explaining the value of his services, the monetary
22 value that he ascertained, and the issuance of
23 these shares.
24 BY MR. HAYES:

Page 132

1 Q. How long had Mr. Cammarata gone unpaid?
2 A. My understanding from Mr. Cammarata was at
3 least a year and a half to 2 years.
4 Q. And what was your understanding as to why
5 he hadn't been paid?
6 A. There was no money.
7 Q. Did that --
8 A. Several of my clients their officers and
9 directors work uncompensated. They're small
10 developmental companies.
11 Q. Okay. Do you, again, do you have any
12 understanding as to -- it's now 2009. Do you
13 understand -- have any understanding as to how
14 long this company had been in existence?
15 A. I don't re- -- yes, I did then. I don't
16 recall now.
17 Q. Okay. And did it concern you at all that
18 the company had been in existence for at least a
19 year and a half, but didn't have the cash to pay
20 its -- or compensate its CEO and president?
21 A. No. That's very typical.
22 Q. That didn't concern you -- did that factor
23 into your consideration as to whether this company
24 might be a shell?

Page 133

1 A. No, not at all.
2 Q. Not at all?
3 A. Well, I shouldn't say not at all. Yes,
4 but as far as my analysis with respect to the
5 company and using footnote 172 and looking at a
6 number of my public company clients, a lot of
7 them, they're struggling.
8 They're -- they've got great business
9 ideas, great business products, business plans.
10 They're in the small developmental stages. They
11 are the backbone of the American economy. They're
12 working hard. And they're infusing their time,
13 their energy, their own money into these companies
14 uncompensated. That's quite normal.
15 Q. Did -- how much in sales did Paradigm have
16 at this time?
17 A. I don't recall an actual figure. I do
18 recall there were some sales, and the research I
19 had done on some of -- on the Internet there were
20 press releases about sales and the potential of
21 sales certainly indicating that this company
22 had -- was in operations, full operations, and had
23 the ability at some point in time to generate
24 revenues.

Page 134

1 Q. How long had it been since the company
2 generated any significant revenue?
3 A. I don't recall that now.
4 Q. Do you recall what assets the company had?
5 A. They had inventory, no cash.
6 Q. How much in inventory?
7 A. I don't recall.
8 (Discussion held off the
9 record.)
10 BY MR. HAYES:
11 Q. What's your definition of a developmental
12 company?
13 A. A developmental company is a company that
14 is -- has nominal assets, but has operations, has
15 contracts, has office space, whether it's
16 somebody's home or whether it's leased office
17 space, has operations and is engaging in
18 operations as far as whatever those business
19 operations are.
20 Q. Is there a time limit? How long can a
21 company be operating as a developmental company
22 before you would get concerned that it's merely a
23 shell?
24 A. I'd say for quite awhile, so long as there

Page 135

1 is operational activity.
2 Q. Okay. And what did you do, other than
3 review press releases and stuff on the Internet,
4 to confirm that Paradigm was engaged in
5 substantive operational activity?
6 A. I spoke at great length with Mr. Cammarata
7 regarding that. And considering that that was his
8 sole source of work and employment, it certainly
9 made sense to me that it was not a shell,
10 that this is what he had been engaging in over
11 the past year and a half, 2 years, and, again,
12 the press releases that were out there with
13 regards to Paradigm itself.
14 Q. And you don't have any of those press
15 releases because they were destroyed in the flood?
16 A. Right. Yeah.
17 MR. HAYES: Should we take a break? We
18 should probably take a break. The tape is about
19 to run out, so why don't we take a lunch break.
20 THE VIDEOGRAPHER: We're off the record at
21 12:31 p.m.
22 (Lunch recess taken from
23 12:31 p.m. to 1:26 p.m.)
24 THE VIDEOGRAPHER: Back on the record with

Page 136

1 tape number three at 1:26 p.m.
2 BY MR. HAYES:
3 Q. Ms. Dalmy, before we continue on with
4 Paradigm, I wanted to see if I can get a little
5 more information about how to contact Mike Lamb.
6 He's that computer technician that we referred to
7 earlier, right?
8 A. I have his business card in my office.
9 Q. Do you?
10 A. Uh-huh.
11 Q. Could you forward to me or have your
12 attorney forward to me his contact information
13 with his business card?
14 A. Sure. Yes.
15 Q. And he said he's in Denver?
16 A. Actually, I might have his number on my
17 cell.
18 Q. That would be great.
19 A. Okay. Yes, he's in Denver. I do.
20 Q. Okay. And what is his phone number?
21 A. [redacted]
22 Q. And is that his cell phone number?
23 A. Yes. It's the only number he has.
24 Q. Okay. All right. And if you could

Page 137

1 still provide to your lawyer his contact
2 information so they could send it on to me,
3 that would be great.
4 A. The same telephone number?
5 Q. Yes. Whatever card -- you said you've got
6 his card in your office?
7 A. I think so. Usually when I need to
8 contact him it's --
9 Q. I understand.
10 A. Yeah.
11 Q. I'm looking for a business address, if you
12 have it.
13 A. Okay. I'll get that for you.
14 Q. Thank you.
15 MR. HAYES: Could you mark this as
16 Plaintiff's Exhibit 34.
17 (Plaintiff's Deposition Exhibit
18 No. 34 marked for
19 identification.)
20 BY MR. HAYES:
21 Q. Ms. Dalmy, if you could take a look at
22 Plaintiff's Exhibit 34. It's a couple-page email,
23 I believe.
24 All right. That second page is kind of

Page 138

1 blank. So it's really a one-page email Bates
2 labeled DAL194. And it's -- the top, the email
3 on the top, is from Scott Wilding to you dated
4 4/13/2009. Do you see that?
5 A. Yes, I do.
6 Q. Okay. Do you recall getting this email
7 from Mr. Wilding?
8 A. No, I don't.
9 Q. Okay. And the subject is "New Stock
10 Distribution Spreadsheet."
11 And he says "Diane, here's the final share
12 breakdown. All parties have agreed. Now we the
13 share the exchange agreement and a PR, Bob is
14 working on one with what you sent us. See ya all
15 tomorrow." Do you see that?
16 A. Yes.
17 Q. Okay. Do you recall about this time
18 having a meeting with Mr. Wilding and Mr. Gasich
19 or any others, an in-person meeting?
20 A. No. I never met anyone.
21 Q. Okay. So in connection with your work on
22 the Zenergy/Paradigm merger, you never personally
23 met Scott Wilding?
24 A. No.

Page 139

1 Q. Robert Gasich?
2 A. No.
3 Q. Vincent Cammarata?
4 A. No.
5 Q. Dan Ryan?
6 A. No.
7 Q. Dale Baeten?
8 A. No. I don't --
9 Q. Okay.
10 A. I think he's one of the shareholders I
11 wrote an opinion letter for. No.
12 Q. George Bowker?
13 A. Never heard of him.
14 Q. Charles Bennett?
15 A. No.
16 Q. With respect to any of the people that
17 you wrote a Rule 144 opinion letter concerning the
18 Zenergy/Paradigm merger, did you personally meet
19 any of those people?
20 A. No.
21 Q. In this email Mr. Wilding writes "Now we
22 the share exchange agreement and a PR..." Do you
23 see that PR?
24 A. Yes.

Page 140

1 Q. Does that refer to a press release?
2 MR. ROSENBURG: Objection, foundation.
3 A. It appears so.
4 BY MR. HAYES:
5 Q. It says "Bob is working on one with what
6 you sent us." Do you see that?
7 A. Yes.
8 Q. Did you send Bob Gasich a draft of a
9 press release?
10 A. I don't recall that at all.
11 Q. Okay. Does your reading of this email
12 suggest that you did?
13 MR. ROSENBURG: Objection, foundation and
14 form.
15 A. It does, but I don't recall ever drafting
16 one, nor did I have anything on my hard drive.
17 BY MR. HAYES:
18 Q. Okay.
19 A. So I don't know.
20 MR. HAYES: Mark this as Plaintiff's
21 Exhibit 35, please.
22
23
24 (Plaintiff's Deposition Exhibit

Page 141

1 No. 35 marked for
2 identification.)
3 BY MR. HAYES:
4 Q. Ms. Dalmy, if you could take a look at
5 what's been marked as Plaintiff's Exhibit 35.
6 It's a one-page document Bates labeled DAL402.
7 Actually, it's a two-page document.
8 It's a series of emails. The one at the
9 top is from Scott Wilding to you dated April 13,
10 2009. Do you see that?
11 A. Yes.
12 Q. Okay. And then the one below that is
13 from you to Scott Wilding, again, with the same
14 date, April 13, 2009, at 10:20 a.m. Do you see
15 that?
16 A. Yes.
17 Q. And then the one at the bottom, the first
18 one there at the bottom, is from Scott Wilding to
19 you dated April 12, 2009, at 10:54 p.m. Do you
20 see that?
21 A. Yes.
22 Q. And the subject to that email is 4 million
23 -- "4M shares I promised."
24 Scott Wilding writes "Hi Diane, it

Page 142

1 looks like we're on our way. Listen, the
2 4 million shares that I promised will come out of
3 my end on the split on the 97,529,074." Do you
4 see that?
5 A. Yes.
6 Q. Okay. So on April 12, 2009, Mr. Wilding
7 is telling you that the 4 million shares he
8 promised is going to come out of his end, correct?
9 A. Yes.
10 Q. Okay. And you respond on April 13, 2009,
11 "Thanks, Scott, much appreciated. Diane."
12 A. Uh-huh.
13 Q. Do you see that?
14 A. Yes.
15 Q. Okay. So at least as of April 13, 2009,
16 it's fair to say that you understood that you were
17 going to be getting 4 million shares of stock from
18 Scott Wilding?
19 A. Only in the event that there was no
20 cash to pay. He knew I was not happy with that.
21 Q. So what you're saying here is that
22 your email when you say "Thanks Scott, much
23 appreciated" is with the understanding that
24 you're only going to accept these shares if you

Page 143

1 don't get paid?
2 A. Absolutely. I have bills to pay. I
3 don't -- yeah, I have never taken shares. I
4 didn't want to take shares. It was the last
5 resort to get compensation for 4 months of
6 hard work.
7 Q. Are you aware of any document anywhere
8 where you specify in writing that you're only
9 going to accept $4 million -- 4 million shares if
10 you don't get paid?
11 A. Say -- tell me that again.
12 Q. Is there any document that you're aware
13 of where you convey in writing that the only way
14 you're going to accept the 4 million shares is if
15 you don't get paid in cash?
16 A. Possibly, but I think it's certainly
17 implied from these prior emails that I am not
18 happy with the fact that I haven't been paid in
19 cash.
20 Q. So I guess to answer my question is is
21 your answer no, I'm not aware of any documents --
22 A. I could have easily have written such an
23 email. I don't recall.
24 Q. So as you sit here today, you're not

Page 144

1 aware of any document wherein you state that the
2 4 million -- you only accept the 4 million shares
3 if you don't get paid in cash?
4 A. If I was aware of any such document, I
5 would have produced it in my -- to the SEC.
6 Q. But don't know what you produced because
7 you haven't reviewed that.
8 A. Oh, then -- oh, with respect to these, no,
9 I don't recall them.
10 Q. So I just want to make sure the record is
11 clear. It's important to my point.
12 A. Okay.
13 Q. You're not aware of any document
14 anywhere wherein you state that the only way
15 I'll accept 4 million shares of stock is if I
16 don't get paid?
17 A. That certainly was my intent. I don't
18 know if I have an email to that effect.
19 Q. Okay. My question is very -- it's a
20 yes-or-no question.
21 Are you aware as you sit here today of any
22 such document?
23 A. No.
24 Q. Thank you.

Page 145

1 Did you understand that one of the terms
2 of this proposed merger between Zenergy and
3 Paradigm is that Paradigm would deliver at closing
4 zero assets and zero liabilities?
5 A. Yes. That's pretty typical, uh-huh, on
6 the day of transaction, yes. That's why some of
7 the settlement agreements were entered into.
8 Q. To make sure that they -- Paradigm
9 delivered zero assets?
10 A. Zero liabilities.
11 Q. Okay. And you also understood that they
12 were going to deliver no assets?
13 A. Generally, yes.
14 Q. Okay.
15 A. Mr. Cammarata was going to still -- he was
16 going to take what inventory there was and still
17 attempt -- that was his livelihood -- so still
18 attempt to market the products.
19 Q. But how could he market the products if at
20 the time of closing Paradigm is going to deliver
21 zero assets?
22 A. Well, the assets were being delivered to
23 Mr. Cammarata. He was taking the assets
24 personally. That was my understanding.

Page 146

1 This was my understanding what they had
2 worked out as far as their agreement with delivery
3 of the vehicle, the company.
4 Q. So your understanding was that at the time
5 of the merger, Mr. Cammarata was going to take all
6 of the assets of Paradigm, whatever assets it had,
7 and take them for himself personally?
8 A. Yes, as his role of CEO. And I recall
9 asking if they needed an assignment agreement, but
10 I don't recall what happened. Nothing happened
11 after that.
12 Q. So -- because Mr. Cammarata as a condition
13 of this merger was going to be terminated as CEO.
14 A. Yes. Uh-huh.
15 Q. So you're saying that what Zenergy and
16 Paradigm agreed to was that once the merger took
17 effect, Paradigm was going to deliver at closing a
18 company with zero assets and zero liabilities?
19 A. At the day of closing, yes.
20 Q. Isn't that the definition of a shell
21 company?
22 A. No, because he had continuous operations
23 up until the moment of signing the share exchange
24 agreement and consummating the transaction.

Page 147

1 Q. So --
2 A. He had operations up until that very
3 moment.
4 Q. What was Mr. Cammarata, what did --
5 A. I --
6 Q. Did he compensate the company for the
7 assets that he took?
8 A. First of all, I'll back up. I made sure
9 of that, that he was in continuous operations
10 up to the moment of the signing of the document
11 and consummation of the transaction as far as
12 the exchange of shares for that very reason,
13 to completely eradicate any indicia of a shell
14 corporation.
15 Q. And what did you do to make sure of that?
16 A. I instructed and asked Mr. Cammarata are
17 you in constant operations? He said yes, it's my
18 livelihood.
19 Q. And other than asking Mr. Cammarata, what
20 did you do, if anything, to ensure that the
21 company --
22 A. Well, he was the officer and director.
23 He's the one who was marketing and selling these
24 products.

Page 148

1 So based on my discussions with him and
2 the reason for my discussions with him, this is
3 what he told me he was doing.
4 Q. Okay. So other than your conversations
5 with Mr. Cammarata, was there anything else that
6 you did to ensure that this company was an
7 operating company?
8 A. Not at that point, no.
9 Q. What do you --
10 A. Well, the settlement agreements, you know,
11 just the ongoing daily operations, asking him.
12 Q. Other than asking him and drafting certain
13 settlement agreements with people that, as I
14 understand it, were owed money by Paradigm; is
15 that correct?
16 A. Paradigm, uh-huh.
17 Q. Other than drafting those settlement
18 agreements and speaking with Mr. Cammarata, what,
19 if anything, did you do to verify that this
20 company was operational?
21 A. Nothing. I took him at his word, that
22 this is what he was doing considering this was his
23 livelihood.
24 Q. Okay. Prior to this had you ever -- prior

Page 149

1 to working on this transaction, had you ever met
2 Mr. Cammarata?
3 A. No.
4 Q. To this day you've never personally met
5 the man, correct?
6 A. No.
7 Q. And just so my -- the record is clear, my
8 statement that you haven't met him until this day
9 is correct?
10 A. Yes, that's correct. I have never met
11 him.
12 Q. So do you know if Mr. Cammarata
13 compensated the company in any form in return for
14 the assets that he took personally?
15 A. There was discussion as to whether he
16 would compensate the company or whether that was
17 his compensation for his time and energy in
18 addition to the issuance of shares.
19 But I don't recall what happened after
20 that. I don't, I don't know.
21 Q. I hadn't seen in any documents that had
22 been produced in this case any reference to
23 Mr. Cammarata taking the assets of the company as
24 compensation for his work.

Page 150

1 A. No, there was -- like I said, yeah,
2 this -- I recall having that conversation and
3 asking if there was documentation that needed --
4 was required or needed, and then it was dropped.
5 So I don't know what the parties agreed
6 amongst themselves, but that was my understanding.
7 Q. You know, in a couple of the emails we
8 saw earlier, they referenced promises by Dan Ryan
9 to pay you for your work in connection with the
10 Paradigm/Zenergy merger. Do you remember that?
11 A. Yes.
12 Q. Why was Dan Ryan offering to pay you?
13 MR. ROSENBURG: Objection, foundation.
14 BY MR. HAYES:
15 Q. What was your understanding as to why
16 Mr. Ryan was offering to pay you?
17 A. I believe he felt badly because he
18 introduced me to this group, and I had provided
19 all of these legal services and was not being
20 compensated.
21 Q. Do you know was Dan Ryan or any business
22 entity owned or controlled by Dan Ryan intended
23 to receive assignment of any of the shares from
24 the Paradigm/Zenergy merger?

Page 151

1 A. I believe Downshire Capital was associated
2 with Dan Ryan.
3 Q. And Downshire Capital was one of the
4 companies that --
5 A. Yes.
6 Q. -- received --
7 A. One of the assignees.
8 Q. They received an assignment of debt from
9 Mr. Gasich, which they then converted into shares?
10 A. Yes.
11 Q. Okay.
12 A. Because of his work that he had provided
13 with regards to Zenergy.
14 Q. The work that Mr. Ryan had provided?
15 A. Yes.
16 Q. What was that? What work was that?
17 A. Consulting services.
18 Q. What kind of consulting services?
19 A. I believe he -- well, he was a consultant
20 as far as to Zenergy.
21 I wasn't Zenergy's counsel, so I'm not
22 positive as to the extent of services, but with
23 regards to his consultant work, I know he was a
24 consultant. I don't know the nature of his

Page 152

1 consulting services.
2 Q. Yeah, and I guess that's my question.
3 Other than just consulting services,
4 do you know what kind? Is it a technology
5 consultant, a biodiesel consultant?
6 A. It could have been all -- it could have
7 been both of those. I don't know.
8 Q. But you don't know?
9 A. No. I just know that he provided
10 consulting services to Zenergy.
11 Q. And what was that based on? You said you
12 know he did provide consulting services to
13 Zenergy. How do you know that?
14 A. Because with regards to each and every
15 assignee, I asked why these assignees were
16 getting shares.
17 And Mr. Gasich explained to me that
18 they had all provided some kind of services to
19 Zenergy, whether it be financial, secretarial,
20 administrative, technology, consultant,
21 web design.
22 Q. Okay. And why hadn't Zenergy paid these
23 people?
24 A. They, like many --

Page 153

1 MR. ROSENBURG: Objection, foundation.
2 A. They, like many of my companies, are
3 cash poor. And this is the way that these
4 small developmental companies are able to
5 jump start, kick start, their business, get going
6 as far as being able to compensate the people that
7 have put hard work into, you know, developing this
8 company when they don't have cash.
9 BY MR. HAYES:
10 Q. And so Zenergy didn't have cash to pay
11 these people?
12 A. Yeah. My understanding too it was a small
13 developmental company, but it had great prospects.
14 Q. What assets did Zenergy have to your
15 understanding?
16 A. They had considerable assets. I saw --
17 well, absolutely I saw the financial statements
18 for a particular month, I believe it was April of
19 2008, to ascertain that the debt existed. And --
20 Q. I'm talking about assets, not debt.
21 A. Well, I know.
22 Q. Okay.
23 A. But I'm explaining the financial
24 statements that I saw.

Page 154

1 And there were assets definitely. I mean,
2 it was -- I don't recall specifically because that
3 was a copy that was in my box, but they had assets
4 definitely and liabilities.
5 Q. And on these financial statements that
6 were in your box, did it reference -- you said it
7 referenced the debt.
8 A. Uh-huh.
9 Q. What debt?
10 A. The debt owed to Mr. Gasich. He
11 specifically pointed that out because I asked.
12 Q. And so these financial statements that
13 reflected the debt owed to Mr. Gasich, you think
14 they were as of April when?
15 A. 2008.
16 Q. Okay. And you specifically saw those?
17 A. Yes.
18 Q. Okay. But you can't produce them and
19 haven't produced them in this case?
20 A. No, because they were in that box.
21 Q. Have you ever seen any financial
22 statements of Zenergy dated after April 2008
23 that did not include any reference to any
24 convertible debt owed to Mr. Gasich?

Page 155

1 A. I don't recall.
2 After what date? I'm sorry.
3 Q. After April 2008.
4 A. No. I looked at the April 2008 financial
5 statements. That was the only month that I looked
6 at.
7 Q. Is there a reason why you didn't look at
8 any financial information after that date?
9 A. That was what was provided to me,
10 and his information that the debt was still
11 intact, and then the fact that I had that as a
12 representation and warranty in the share exchange
13 agreement. And I also had it in a board
14 resolution that was signed off by Mr. Luiten
15 attesting to the existence of the debt.
16 MR. HAYES: Mark this as Exhibit 36,
17 please.
18 (Plaintiff's Deposition Exhibit
19 No. 36 marked for
20 identification.)
21 BY MR. HAYES:
22 Q. Ms. Dalmy, if you could take a look at
23 Plaintiff's Exhibit 36.
24 A. Yes.

Page 156

1 Q. And it's a two-page document. The
2 first page is "Notice of Conversion" and the
3 second page is titled "Assignment of Debt." It's
4 Bates labeled DAL182 to DAL183. Do you see that?
5 A. Yes.
6 Q. Okay. Focusing on the second page,
7 the assignment of debt, do you recognize this
8 document?
9 A. Yes, I do.
10 Q. Okay. Is this a document that was
11 prepared in connection with the Paradigm/Zenergy
12 merger?
13 A. It was not prepared by me, but it was
14 prepared.
15 Q. Okay. Who was it prepared by?
16 A. Mr. Gasich, I believe.
17 Q. All right. And you were provided a copy
18 of this document?
19 A. Yes.
20 Q. All right. This document references
21 that Robert Luiten is the assignor and in this
22 case is going to be assigning to Skyline Capital
23 Investment, the assignee. Do you see that?
24 Page 2, the second page.

Page 157

1 A. That's odd. Then I don't recognize this
2 document.
3 Q. Okay. This came from your files.
4 A. Okay. He wasn't the holder of the debt.
5 Q. Well, and that, I guess, is my question.
6 It looks like at a certain point during
7 this transaction, and I mean the Zenergy/Paradigm
8 merger, documents were prepared indicating
9 that Robert Luiten was going to assign certain
10 debt to various assignees, including Skyline
11 Capital Investment. Do you see that?
12 A. I have no knowledge of this. I mean,
13 it was produced by me from, what, the emails that
14 were elicited from my computer by my computer
15 technician. I have no idea what this document
16 is in connection with.
17 Q. And who was -- you knew who Robert Luiten
18 was?
19 A. Yes. He was the president and the CEO.
20 He's an affiliate.
21 Q. Of Zenergy?
22 A. Zenergy, yes.
23 Q. Right. And so when you say he's an
24 affiliate, you're using that term in connection

Page 158

1 with Rule 144, correct?
2 A. Well, yes. He could assign debt, but it
3 certainly wouldn't be free trading.
4 Q. Okay. And so that was because of his
5 affiliate status?
6 A. Yes. Uh-huh.
7 Q. So do you recall at any time the parties,
8 whether it was Mr. Luiten, Mr. Gasich,
9 Mr. Wilding, Mr. Cammarata or anybody else,
10 suggesting that somebody other than Robert Gasich
11 be the assignor of the debt?
12 A. There was discussion at the onset
13 regarding the overall structure. And that was
14 when we were discussing the need for convertible
15 debt to compensate these people who had provided
16 services to Zenergy.
17 And I made the statement that there were
18 two caveats. The one is that the debt had to be
19 evidenced on financial statements and aged, and
20 the second was that it was nonaffiliate debt. So
21 I --
22 Q. And who did you have these conversations
23 with?
24 A. Mr. Gasich, Scott Wilding and

Page 159

1 Vincent Cammarata.
2 Q. Okay. And in this instance Skyline
3 Capital Investment, that's Mr. Wilding's company,
4 correct?
5 A. Yes, it is.
6 Q. And it says in this document that
7 Skyline Capital provided certain consulting
8 services?
9 A. Yes, it does.
10 Q. Okay. What consulting services did
11 Skyline Capital provide?
12 A. Well, Mr. Wilding was an integral part
13 of the structuring of the transaction. I was not
14 always privy or a participant in the telephone
15 conversations, but he worked closely with
16 Mr. Cammarata with regards to mergers, the merger.
17 Q. Okay. So as far as you knew, the
18 consulting services that Mr. Wilding provided
19 were in relation to putting the merger between
20 Paradigm and Zenergy together?
21 A. Yes.
22 Q. Okay. Do you recall at any point having a
23 subsequent discussion with Mr. Gasich, Mr. Luiten,
24 Mr. Cammarata, any of those individuals to the

Page 160

1 extent -- to the effect that hey, you know, we
2 already discussed this before, but somebody like
3 Mr. Luiten can't be the assignor of this debt?
4 A. I reiterated that quite often.
5 Q. Why?
6 A. Because it's a very important aspect as
7 far as a Rule 144 and the tacking period. You
8 cannot have an affiliate who assigns debt. If
9 that's the case, then the assignee takes the
10 new holding period under Rule 144.
11 Q. And so let me see if I understand that.
12 The holding period you're referring to generally
13 is the one-year holding?
14 A. The one, because this was not a fully
15 reporting company. It was a one-year period.
16 Q. So before the shares could be freely
17 tradeable, they had to be held for at least a
18 year?
19 A. Yes. So if those shares came from an
20 affiliate, there would be a new one-year holding
21 period.
22 Q. Whereas, if in certain circumstances
23 somebody who is not an affiliate held the shares
24 for a year, and then assigned those shares a

Page 161
1 day later to somebody else who was not an
2 affiliate, that assignee could get the benefit
3 of the one-year holding period from the assignor;
4 is that correct?
5 A. Yes. Yes.
6 Q. Okay. However, if the assignor of the
7 shares or the securities is an affiliate of the
8 issuer, then even if he held the shares for
9 5 years, if he assigns those shares to somebody
10 else, that assignee has to hold the shares for a
11 year?
12 A. That's correct, irrespective of whether
13 it's a conversion of debt or just a private sale
14 of stock that's already been issued.
15 Q. Okay. And that was something that you
16 understood at the time you were preparing the
17 opinion letters --
18 A. Yes.
19 Q. -- in this case?
20 A. Yes.
21 Q. And so ultimately the decision was made
22 that Robert Gasich would serve as the assignor of
23 the convertible debt that was going to be used to
24 obtain freely tradeable shares of Zenergy,

Page 162
1 correct?
2 A. Yes.
3 Q. Okay. Now, in June of 2009 Robert Gasich
4 was an affiliate of Zenergy?
5 A. No. Robert Gasich? No, he was not an
6 affiliate. He was not an officer or director.
7 And he -- I asked him. He didn't hold any shares.
8 I was given -- I believe I saw a shareholders
9 list, and he was not on the shareholders list. He
10 was not listed as a shareholder.
11 Q. He, in fact, was, prior to June 2009, a
12 significant shareholder in Zenergy, wasn't he?
13 A. No.
14 MR. ROSENBURG: Objection to the form.
15 A. No.
16 BY MR. HAYES:
17 Q. And you, in fact, were told he owned more
18 than 10 percent shares in Zenergy and was an
19 affiliate, correct?
20 A. No. I -- specifically I recall seeing an
21 email, and I specifically asked him do you hold
22 shares in Zenergy? And he said no, he did not.
23 That was one reason why I specifically
24 confirmed that with him, that he was not a

Page 163
1 shareholder. He said members of his family were
2 shareholders.
3 Q. Okay.
4 A. And I said well, they don't live under the
5 same household? And he said no.
6 Q. All right. Well, let's -- let me ask you
7 about that.
8 So you were told that certain members of
9 his household -- or, I'm sorry, certain relatives
10 of his were shareholders, correct?
11 A. In a general statement, yes. When I asked
12 him if he held any shares, I was ascertaining the
13 affiliate status.
14 Q. And when did this conversation occur?
15 A. Prior -- when they identified him as the
16 holder of the debt that was to be converted.
17 Q. Okay. So before the actual merger took
18 effect?
19 A. I don't recall when.
20 Q. Okay. Before the actual assignment of the
21 debt and conversion notices?
22 A. In all probability.
23 Q. And before you issued your Rule 144
24 opinions?

Page 164
1 A. Well, yes. Absolutely.
2 Q. So what did Mr. Gasich tell you about
3 which family members were shareholders?
4 A. He didn't.
5 Q. Okay. He just said certain family
6 members?
7 A. I don't recall. Yes, he just said family
8 members.
9 Q. Isn't a shareholder's -- I'm going to
10 strike that.
11 Isn't a person's relatives -- strike that.
12 Aren't the shares owned by a person's
13 relatives important in determining whether that
14 person is an affiliate of the company?
15 MR. ROSENBURG: Object to the form.
16 A. When I make my --
17 THE WITNESS: I can answer, right?
18 MR. ROSENBURG: Yeah.
19 A. When I make my determination, I look at
20 the shares held by a husband and wife and combine
21 those.
22 I don't combine any other shares unless
23 that person is living under the same household.
24 BY MR. HAYES:

Page 165

1 Q. But you're familiar with
2 Rule 144(a)(ii)(i), the definition of affiliate?
3 A. Yes.
4 Q. Okay. That includes a person's spouse,
5 right?
6 A. Yes.
7 Q. A person's relatives?
8 A. If -- my understanding is if they're
9 living under the same household.
10 Q. So only to -- a person's relatives only
11 count if they're living within the same household?
12 A. That's totally my understanding, yes.
13 Q. Okay. And that's the understanding you
14 were operating with at the time --
15 A. Yes. Uh-huh.
16 Q. Okay. And then in addition to that
17 certainly anybody that lives in the household?
18 A. Yes, if they're a relative.
19 Q. But what if it's Mr. Gasich's girlfriend
20 that lives in the household with him, is that
21 person, to your understanding, considered as part
22 of the affiliate determination?
23 A. Yes, I would --
24 MR. ROSENBURG: Object to form and

Page 166

1 foundation. It's hypothetical.
2 A. I don't ask about girlfriends. I ask
3 about spouses, and if anyone who lives in the
4 household, with the assumption that it's a
5 relative, holds shares.
6 BY MR. HAYES:
7 Q. Do you know who Kymberly Nelson is?
8 A. No.
9 Q. She was one of the people that you wrote a
10 Rule 144 opinion letter for.
11 A. Right. I recognize the name on the
12 assignee.
13 Q. Have you ever spoken to her?
14 A. Never.
15 Q. You never met her?
16 A. Never.
17 Q. Do you understand at the time that you
18 provided your Rule 144 opinion letter for her,
19 that she was living with Bob Gasich?
20 A. No.
21 Q. And that she was his girlfriend?
22 A. I had no knowledge of that, nor did I
23 have knowledge of the individual who was the
24 car mechanic or any of that.

Page 167

1 I was told that all of those assignees
2 were people who had provided bona fide services to
3 Zenergy and who needed to be compensated.
4 Q. Yeah, but if a person actually does
5 provide bona fide services, it still is relevant
6 in determining affiliate status whether that
7 person is a relative of the -- or living with the
8 person assigning the shares, isn't it?
9 A. Yes.
10 Q. Okay. So regardless of whether
11 Ms. Nelson provided any valid consulting services,
12 it was still relevant to the determination of
13 Mr. Gasich's affiliate status, the shares that
14 she owned, because she was living with him,
15 correct?
16 A. When I discussed affiliate status with
17 Mr. Gasich, I explained to him that that included
18 shares owned by him and shares owned by any -- by
19 his spouse and shares owned by any relatives
20 living under his household.
21 Q. Okay.
22 A. That was my explanation.
23 Q. And so if Mr. Gasich lived in Mr. --
24 A. Ms. Gasich?

Page 168

1 Q. Ms. Nelson lived in the same household
2 with Mr. Gasich, but was not married to him, in
3 your view that -- her ownership of shares in
4 Zenergy is not relevant to the determination of
5 Gasich's affiliate status?
6 MR. ROSENBURG: Object to the form.
7 A. That would be a factor I would consider,
8 but I was not advised that any girlfriend was
9 living with Mr. Gasich.
10 BY MR. HAYES:
11 Q. Okay. Regardless of whether you were
12 advised of these factors, is it fair to say that
13 if Mr. Gasich in combination with Mr. Nelson owned
14 more than 10 percent -- owned 10 percent or more
15 of Zenergy, Mr. Gasich would be considered an
16 affiliate?
17 MR. ROSENBURG: Object to the form.
18 A. And if I had known that, I would not have
19 written the opinion.
20 BY MR. HAYES:
21 Q. And my question is was my statement
22 correct?
23 A. Your statement --
24 MR. ROSENBURG: Object to the form.

Page 169

1 Go ahead.
2 A. Your statement is correct.
3 BY MR. HAYES:
4 Q. And I realize you're testifying that you
5 didn't know that.
6 A. I didn't know that.
7 Q. And if you had known it, you wouldn't
8 have written the Rule 144 opinion approving the
9 assignment of shares to Ms. Nelson from Mr. Gasich
10 as freely tradeable?
11 MR. ROSENBURG: Object to the form.
12 A. In my conversations with everyone,
13 including Mr. Gasich, Scott Wilding and
14 Vincent Cammarata, I explained as far as
15 convertible debt the fact that it had to be
16 aged, on the financial statements, evidenced, and
17 that it could be nonaffiliate debt.
18 And I explained what nonaffiliate debt
19 meant. And my explanation was an officer,
20 director or 10 percent or greater shareholder
21 holding shares or having anyone in the same
22 household, including your spouse, who may or may
23 not live in that household, holding shares.
24 That was the end of my -- nobody ever said

Page 170

1 my girlfriend lives there. I don't know. I did
2 not have that knowledge.
3 BY MR. HAYES:
4 Q. Okay. But --
5 A. Of any of these assignees.
6 Q. But you would agree under the facts as
7 I stated them, which is that if Mr. Gasich and his
8 girlfriend owned more together, owned more than
9 10 percent of the shares in Zenergy, and they
10 lived together, Mr. Gasich would be considered an
11 affiliate under Rule 144?
12 A. I agree --
13 MR. ROSENBURG: Object to the form.
14 A. I agree with that, and I would not have
15 written the opinion.
16 BY MR. HAYES:
17 Q. Did anybody tell you that Mr. Gasich was,
18 in fact, an affiliate of Zenergy?
19 A. I asked Mr. Gasich himself, and he said
20 no.
21 Q. Okay. Did anybody else tell you that,
22 in fact, Mr. Gasich was an affiliate?
23 A. Was?
24 Q. Yes.

Page 171

1 A. Or was not?
2 Q. Was.
3 A. No, no one told me that he was until it
4 was in relationship to one of those opinions. I
5 forgot which shareholder.
6 When a broker emailed me and said that
7 Mr. Gasich was an affiliate, and I emailed back
8 and said no, he's not.
9 Q. And prior to that nobody had ever told you
10 that --
11 A. No.
12 Q. -- that he was an affiliate?
13 A. No.
14 MR. HAYES: Would you mark this as
15 Plaintiff's Exhibit 37.
16 (Plaintiff's Deposition Exhibit
17 No. 37 marked for
18 identification.)
19 BY MR. HAYES:
20 Q. Ms. Dalmy, if you could look at
21 Plaintiff's Exhibit 37.
22 A. Uh-huh.
23 Q. It's an email from Mr. Wilding to you
24 dated June 3, 2009, at 3:39 and 30 seconds p.m.

Page 172

1 A. Uh-huh.
2 Q. The subject is Bob's debt. The document
3 was produced from your files, and it's Bates
4 labeled DAL361.
5 Do you recall getting this email from
6 Mr. Wilding?
7 A. No, I don't.
8 Q. Okay. I'm going to read the email. It
9 says "Diane, since Bob is an affiliate with
10 Zenergy (10 percent), not a director or control
11 person do you see any violations of rule 144 that
12 could ever come back to haunt us."
13 Okay. Is it fair to say that Mr. Wilding
14 told you that Bob Gasich was an affiliate of
15 Zenergy?
16 MR. ROSENBURG: Object to the form.
17 A. That's what this particular email states.
18 And it's not the email I was referring to when
19 there was another email that stated that Bob was
20 an affiliate. And that's when I asked Bob about
21 his record holdings. I specifically asked him.
22 BY MR. HAYES:
23 Q. Okay. Well, this email from Scott Wilding
24 is dated June 3, 2009.

Page 173

1 A. Uh-huh.
2 Q. It seems to contradict your earlier
3 testimony that nobody ever told you that Bob
4 was an affiliate.
5 A. Well, it -- no.
6 MR. ROSENBURG: I don't think that's a
7 question.
8 THE WITNESS: Okay.
9 BY MR. HAYES:
10 Q. Okay. Why doesn't it contradict your
11 testimony?
12 A. Because I did reference the fact that I
13 had received some email referencing that Bob was
14 a shareholder, and that's not this email. I don't
15 recall this email.
16 That's when I asked Bob again as far as
17 his holdings, equity holdings in Zenergy, if he
18 was a shareholder.
19 Q. And so that email that you're referring
20 to, that's the email from the broker?
21 A. No. It was an email previous to that.
22 Q. So it's another email?
23 A. Yes.
24 Q. There was another email?

Page 174

1 A. Yes. Yes.
2 Q. So in addition to this email that we're
3 looking at as Plaintiff's Exhibit 37, there was
4 another email that you received that said
5 Bob Gasich is an affiliate?
6 A. There was -- there was one email that
7 made a reference. I don't recall who sent it.
8 But it certainly prompted me to speak with Bob and
9 ask him do you hold shares of stock? Are you an
10 affiliate? We have gone over this.
11 And he said no, he does not hold shares
12 of stock. And that's when he represented that
13 members of his family did. And we went through,
14 again, the definition of affiliate.
15 Q. And did you ask Bob if at this time if any
16 of the companies -- let me strike that.
17 Did you ask Bob at this time, Bob Gasich,
18 if he owned shares in any company that owned more
19 than 10 percent of Zenergy?
20 MR. ROSENBURG: Object to the form.
21 A. I know I would have said indirect or
22 directly do you hold shares in any fashion? I
23 don't recall if I said through another company or
24 any way.

Page 175

1 But I said do you hold shares in any
2 manner with Zenergy? And this includes your
3 spouse or anyone living under the same roof as
4 you.
5 BY MR. HAYES:
6 Q. Because that matters to the determination
7 of affiliate?
8 A. That's so -- yeah.
9 Q. I mean, that's basic, right?
10 A. Yeah. Yeah.
11 Q. I mean, if he owns shares in a company
12 which itself owns 10 percent or more of shares --
13 A. Well, 10 percent, yes, 10 percent.
14 Q. Let me finish the question. If Mr. Gasich
15 owns shares in a company which itself owns
16 10 percent or more shares of Zenergy, Mr. Gasich
17 is an affiliate of Zenergy?
18 A. That's correct.
19 Q. And that's basic black letter?
20 A. That's basic, yes.
21 Q. And so if Mr. Gasich owned shares in a
22 company called The Spire Group, which owned over
23 30 percent of the shares or roughly 30 percent
24 of the shares of Zenergy, then Bob Gasich is an

Page 176

1 affiliate of Zenergy?
2 A. If that's true, then yes, he would be.
3 Q. And if that were true, then you couldn't
4 properly issue a Rule 144 opinion letter opining
5 that any of Mr. Gasich's assignees received freely
6 tradeable shares?
7 A. I would not have --
8 MR. ROSENBURG: Object to the form.
9 A. I would not have written such an opinion.
10 BY MR. HAYES:
11 Q. And if you did issue such an person under
12 those circumstances, that such an assignee
13 received freely tradeable shares, that would be
14 inaccurate under the law, correct?
15 MR. ROSENBURG: Object to the form.
16 A. That's true. And I would have said you
17 need to look at other debt.
18 BY MR. HAYES:
19 Q. Meaning that the company would have had
20 to find some other debt owed to somebody else that
21 was convertible to use?
22 A. Yes. I believe they had other options.
23 Q. Okay. Do you know whether or not a
24 company called The Spire Group was at some point

Page 177
1 in time prior to the issuance of your Rule 144
2 opinion letters in this case a holder of more
3 than 10 percent of the shares of Zenergy?
4 A. I have no knowledge of that.
5 Q. Okay. And if you -- what would you do,
6 I guess -- in a situation where you come to learn
7 that the shareholders of the -- of Zenergy include
8 corporations or businesses, business entities that
9 hold 10 percent or more of Zenergy's stock, what,
10 if anything, would you do to determine -- strike
11 that.
12 Isn't it -- in a situation where you're
13 writing a Rule 144 opinion letter, and you learn
14 that the issuer of shareholders include a
15 business entity, okay, isn't it important for
16 you to find out who the shareholders of those
17 business entities are to determine whether or
18 not the assignor of the security is an affiliate?
19 A. Many times there's a number of
20 shareholders of public companies that are
21 corporate entities or LLCs. And no, I will ask
22 that person do you directly or indirectly hold any
23 shares in this particular company.
24 I don't sit there and identify each and

Page 178
1 every corporate or LLC entity that holds shares to
2 ascertain that. I will take what that person
3 tells me.
4 If I'm drafting a registration statement
5 or some other document, then I present in the
6 registration statement or in a disclosure document
7 for OTC markets, I would present who the people
8 are behind the entity holding those shares.
9 But for purposes of a Rule 144 opinion,
10 no, I haven't done that.
11 Q. Did you ask Mr. Gasich whether he owned
12 any interest in The Spire Group?
13 A. I didn't know about The Spire Group. I
14 asked him if he held any shares in any way in
15 Zenergy, and his response was no.
16 And I asked him that after I had some
17 email that said he was an affiliate because of
18 his equity holdings. And I asked him to confirm
19 that, and he said no.
20 Q. And other than speaking with Mr. Gasich,
21 did you do anything else to determine whether or
22 not he was an affiliate of the Spire -- or of
23 Zenergy?
24 A. I don't recall, but I do know that

Page 179
1 Mr. Luiten was aware of this entire transaction
2 and the convertible debt.
3 Q. So you don't remember whether you did
4 anything other than speak to Mr. Gasich to
5 determine --
6 A. He's the one --
7 Q. -- to determine whether or not he was an
8 affiliate of Zenergy?
9 A. No. I spoke directly with him regarding
10 his equity holdings.
11 Q. And other than speaking directly with him,
12 you can't recall doing anything else?
13 A. I recall seeing a shareholders list. I
14 don't recall where that came from or what it was.
15 I just recall seeing or -- I mean, I don't recall.
16 I recall knowing that Mr. Luiten was a
17 majority shareholder, and there were, you know,
18 other shareholders. I -- and then that's -- I
19 asked Mr. Wilding specifically.
20 Q. Well, Mr. Wilding is the one that told
21 you --
22 A. I mean, I'm sorry, Mr. Gasich
23 specifically.
24 Q. Okay. And other than that you can't

Page 180
1 recall doing anything else?
2 A. No. Uh-uh.
3 Q. Okay.
4 A. Because we had gone over this so many
5 times.
6 MR. HAYES: Could you mark this as
7 Plaintiff's Exhibit 38, please.
8 (Plaintiff's Deposition Exhibit
9 No. 38 marked for
10 identification.)
11 BY MR. HAYES:
12 Q. Ms. Dalmy, if you take a look at
13 Plaintiff's Exhibit 38, which is an email
14 from Optimal246@AOL.com to you dated June 4, 2009.
15 It's got a Bates label at the bottom
16 SEC-DALMY-E-0000035. Do you see that?
17 A. Yes.
18 Q. Okay. Optimal246@AOL.com, I think we
19 clarified earlier that's a reference to -- that's
20 Bob Gasich's email, correct?
21 A. Yes.
22 Q. And so this is an email from Mr. Gasich to
23 you on June 4, 2009, correct?
24 A. Yes.

Page 181

1 Q. And this was before you issued your
2 Rule 144 opinions in this case, correct?
3 A. Yes.
4 Q. All right. And so he says "Diane - here
5 are 3 of the 4 debt assignments with the 4th to
6 be sent to you tomorrow morning.
7 "Here is the list of shareholders that
8 will receive new shares of restricted PTPC
9 (1 old Zenergy share for 7 new shares.) Do we
10 need to reduce this onto our letterhead?"
11 And then he says 216,232 -- I'm sorry.
12 Strike that. "216,232,100 in exchange for 100% of
13 Zenergy shares."
14 Okay. Do you see that?
15 A. Yes.
16 Q. And then it lists a number of
17 individuals and entities that hold the Zenergy
18 shares, correct?
19 A. Uh-huh. Yes.
20 Q. Third down is a company called The Spire
21 Group, LLC, that holds, according to Mr. Gasich,
22 66;663,331 shares. Do you see that?
23 A. Yes.
24 Q. And then right below that is

Page 182

1 Robert Luiten, and he holds the same amount of
2 shares, correct?
3 A. Uh-huh.
4 Q. Is that a yes?
5 A. Yes.
6 Q. And then three down from that is
7 Tammy McIntyre, and she holds slightly less, but
8 roughly the same amount of shares at 666,614,338.
9 Do you see that?
10 A. Yes.
11 Q. Okay. So clearly the three largest
12 shareholders there for Zenergy are The Spire Group
13 LLC, Mr. Luiten and Ms. McIntyre, correct?
14 A. Yes.
15 Q. And that would make Mr. Luiten and
16 Ms. McIntyre and The Spire Group affiliates of
17 Zenergy, correct?
18 A. Yes.
19 Q. All right. So if it turns out that
20 Mr. Gasich owns The Spire Group, Mr. Gasich is an
21 affiliate of Zenergy, correct?
22 A. Yes.
23 Q. All right. And what you're saying is
24 that at the time that you issued your opinion

Page 183

1 letters, you personally had no idea that
2 Mr. Gasich owned any interest in The Spire Group?
3 A. I had no idea.
4 Q. Okay. As you sit here today, are you
5 aware of the fact that Mr. Gasich did, in fact,
6 own The Spire Group?
7 A. Based on what you just told me.
8 Q. Okay. So prior to me telling you this
9 right now --
10 A. No.
11 Q. -- you had no knowledge?
12 A. No.
13 Q. -- that Mr. Gasich owned --
14 A. No.
15 Q. -- any interest in The Spire Group?
16 A. Not really. No.
17 Q. What do you mean not really?
18 A. Did we talk -- we might have talked
19 about --
20 Q. Don't tell me anything --
21 A. Okay.
22 Q. Other than through communications with
23 your lawyer prior to today, did you learn any
24 information that --

Page 184

1 A. Excluding my discussions?
2 Q. Excluding discussions with your lawyers.
3 A. No.
4 Q. Have you learned any information prior to
5 today that suggests to you that Mr. Gasich owned
6 an interest in The Spire Group?
7 A. No. I did not, no.
8 (Discussion held off the
9 record.)
10 BY MR. HAYES:
11 Q. And if you had known that Mr. Gasich
12 owned more than 10 percent of the interest in
13 The Spire Group, you wouldn't have written a
14 Rule 144 opinion for any of Gasich's assignees in
15 this case, correct?
16 MR. ROSENBURG: Object to the form.
17 A. That's correct. I would have advised to
18 determine other convertible debt to use.
19 BY MR. HAYES:
20 Q. And that's because if, in fact, Mr. Gasich
21 owned more than 10 percent of The Spire Group, he
22 would have been deemed an affiliate of Zenergy
23 under Rule 144, correct?
24 A. I would have to research that. I don't

Page 185

1 know that because you, as a shareholder, own
2 10 percent or more of The Spire Group, which,
3 in turn, holds 10 percent -- or in this case
4 well over 10 percent -- of the shares of Zenergy,
5 whether that makes you an affiliate.
6 It would certainly be something that I
7 would want to know and that I would research.
8 Q. What if Mr. Gasich owned a majority of the
9 ownership interest?
10 A. Yes, then I would not have written the
11 opinion.
12 Q. So if Mr. Gasich owned a majority of the
13 shares in The Spire Group, that would have made
14 him an affiliate of Zenergy, correct?
15 A. I would be looking at whether or not he
16 has the full power and authority to direct and
17 dispose of the shares held by The Spire Group.
18 That would also be a factor that I would consider
19 as far as affiliate status of his interest in
20 The Spire Group, which, in turn, holds shares in
21 Zenergy.
22 Q. Well, if he had majority control over
23 The Spire Group --
24 A. Then I would say yes, uh-huh, that would

Page 186

1 be a factor or if he was an officer or director of
2 The Spire Group.
3 Q. Correct.
4 A. That would also be a factor.
5 Q. Did you do anything to determine whether
6 Mr. Gasich was an officer or director of The Spire
7 Group or a member?
8 A. No. I don't recall this email, and I
9 never received the shares actually in my office
10 to exchange.
11 So I was not really involved in the
12 exchange of shares or the communications to the
13 transfer agent to issue the new shares based upon
14 this list.
15 So I don't even know -- I don't believe I
16 was aware of The Spire Group.
17 Q. Well, you were copied on this email.
18 A. It was sent to me, yes.
19 Q. Yeah, actually, that's correct. Thank
20 you. It was sent to you.
21 A. I'm sure I looked at it and waited for
22 the shares to come, and they never came, and I
23 don't recall.
24 Q. And so if, in fact -- if the facts in

Page 187

1 this case demonstrate that Mr. Gasich was an
2 affiliate of Zenergy, then your Rule 144 opinions
3 relating to Mr. Gasich's assignees are incorrect?
4 MR. ROSENBURG: Object to the form.
5 A. At the time I rendered these opinions,
6 I had no knowledge of any affiliate status of
7 Mr. Gasich. I was advised otherwise.
8 BY MR. HAYES:
9 Q. And all I'm saying is regardless of your
10 knowledge, if it turns out, in fact, that you
11 were lied to, and Mr. Gasich was an affiliate of
12 Zenergy, then the statements in your Rule 144
13 opinion letter are inaccurate?
14 MR. ROSENBURG: Object to the form.
15 A. Yes, they would be inaccurate if he was an
16 affiliate.
17 MR. HAYES: Could we take a break.
18 THE VIDEOGRAPHER: Off the record at
19 2:36 p.m.
20 (Recess taken from 2:36 p.m. to
21 2:52 p.m.)
22 THE VIDEOGRAPHER: Back on the record with
23 tape number four at 2:52 p.m.
24 MR. HAYES: Mark this as Plaintiff's

Page 188

1 Exhibit 39, please.
2 (Plaintiff's Deposition Exhibit
3 No. 39 marked for
4 identification.)
5 BY MR. HAYES:
6 Q. Ms. Dalmy, if you could take a look at
7 Plaintiff's Exhibit 39 and let me know if you
8 recognize it.
9 A. Yes, I do.
10 Q. Okay. This is a copy of the Share
11 Exchange Agreement between Zenergy and Paradigm,
12 correct?
13 A. Yes.
14 Q. And you were involved in the preparation
15 of this document, correct?
16 A. Yes. I drafted this document.
17 Q. Okay. Ms. Dalmy, in connection with
18 your legal services provided relating to the
19 Zenergy/Paradigm merger transaction, did you
20 at any point become aware of the fact that
21 Paradigm, the corporate entity, was no longer
22 in good standing in the state of Delaware?
23 A. Yes, I knew that.
24 Q. Okay. So when did you learn that?

Page 189

1 When was it that you learned that?
2 A. I believe during the time that I was
3 working on the reverse stock split.
4 Q. Okay. And what was the reason that,
5 to your knowledge, Paradigm's, the entity, was
6 no longer in good standing in the state of
7 Delaware, where it was incorporated?
8 A. I asked Mr. Cammarata that, and he said it
9 was because they had insufficient funds to pay the
10 franchise taxes.
11 Q. Okay. And that's something that a
12 company -- corporation has got to pay every year?
13 A. Yes.
14 Q. The franchise taxes?
15 A. In Delaware, yes.
16 Q. And do you know -- do you remember how
17 long it had been since Paradigm had paid the
18 franchise taxes?
19 A. I believe it was, you know, definitely
20 2 or 3 years. I don't recall.
21 Q. Okay. Did that concern you at all?
22 A. Well, sure. Any time that anyone doesn't
23 pay taxes concerns me, but I understood the reason
24 why.

Page 190

1 Q. And why? What was the reason?
2 A. They had insufficient funds. And that's
3 happened before with some of my clients. I
4 think Delaware is a rather steep state as far as
5 incorporating fees and annual tax fees.
6 Q. Okay. Did you ultimately assist Paradigm
7 in the payment of the franchise taxes?
8 MR. ROSENBURG: Object to the form.
9 A. I don't recall, but I'm sure I did. I'm
10 sure I telephoned the Delaware Secretary of State
11 up -- I have on other occasions -- and ascertained
12 the tax liability and how to reduce it and what to
13 file.
14 BY MR. HAYES:
15 Q. And because as part of the share exchange
16 agreement, there is a representation, a warranty,
17 that Paradigm is --
18 A. Is in good standing.
19 Q. -- is in good standing, correct.
20 A. Right. And I think we effected the
21 reverse stock split prior to the finalization of
22 the share exchange agreement.
23 Q. Do you remember what the amount of
24 delinquent franchise taxes was?

Page 191

1 A. No. I don't recall.
2 Q. Do you know based on your many years'
3 experience as a securities and a corporate
4 attorney approximately the amount of franchise
5 tax annually in the state of Delaware?
6 A. It can vary. I've seen it as high as
7 19,000. They have some formula. I don't recall
8 right now.
9 Q. Okay. What's their formula based on?
10 A. Either authorized capital or a level of
11 assets. I don't specifically recall.
12 Every time I've had to compute it, I
13 do so with the assistance of somebody in that
14 department.
15 Q. And you don't remember with respect to
16 Paradigm what that annual franchise tax was?
17 A. No.
18 MR. HAYES: Okay. Mark this as
19 Plaintiff's Exhibit 40, please.
20 (Plaintiff's Deposition Exhibit
21 No. 40 marked for
22 identification.)
23
24 BY MR. HAYES:

Page 192

1 Q. Ms. Dalmy, if you could take a look at
2 Plaintiff's Exhibit 40. It's DAL161 to 162. It's
3 a series of emails between you, Mr. Wilding and
4 others.
5 And I'd like to focus for a second on the
6 second page, that first email on the second page
7 dated May 31, 2009, from Mr. Wilding to you. Do
8 you see that?
9 A. Uh-huh.
10 Q. Is that a yes?
11 A. Yes. Sorry. Yes.
12 Q. That's okay. Thank you.
13 And the subject is "Zenergy." Do you see
14 that?
15 A. Yes.
16 Q. And it says -- Mr. Wilding writes
17 "Hi Diane - I know that you are overwhelmed with
18 work and you're only one person juggling a lot of
19 other companies." Do you see that?
20 A. Yes.
21 Q. What was your understanding as to what
22 other companies Mr. Wilding was referring to?
23 MR. ROSENBURG: Objection, foundation.
24 A. My other clients.

Page 193
1 BY MR. HAYES:
2 Q. Okay.
3 A. I've been extreme -- I am extremely busy.
4 I have --
5 Q. He says "Here's another offer from me to
6 know. I'll assign another 2 million shares" --
7 well, it says 2M. Did you understand that to mean
8 2 million?
9 A. Yes.
10 MR. ROSENBURG: Objection, foundation.
11 BY MR. HAYES:
12 Q. "I'll assign another 2 million of my
13 shares to you for a total of 6 million if you can
14 (PLEASE) make sure the TA has everything needed
15 for the shares to be DWAC'd this week after
16 Bob takes care of the amendment to the par value,
17 et cetera."
18 What does DWAC'd mean?
19 A. DWAC'd.
20 MR. ROSENBURG: Objection.
21 BY MR. HAYES:
22 Q. What does DWAC'd mean?
23 A. Electronic form.
24 Q. What do you mean by that?

Page 194
1 He's saying just make sure the TA has
2 everything needed to make sure the shares can be
3 DWAC'd. What does that mean?
4 MR. ROSENBURG: Objection, foundation.
5 A. I don't know what the transfer agent would
6 need for the shares to be DWAC'd. I --
7 BY MR. HAYES:
8 Q. What does it mean for the shares to be
9 DWAC'd?
10 A. It means that they're not issued in
11 certificate form, that they're issued
12 electronically.
13 Q. Okay. Very good. And then he says
14 "We're so close to making a huge score. Even
15 if it doesn't happen this week, I'll assign the
16 2 million. Sorry for this email but it's like we
17 won the lottery but cannot cash in ticket for few
18 weeks." Do you see that?
19 A. Yes, I see that.
20 Q. And what was your understanding with
21 regard to Mr. Wilding's statement "it's like we
22 won the lottery but cannot cash in the ticket for
23 a few weeks"?
24 MR. ROSENBURG: Objection, foundation.

Page 195
1 A. This guy drove me insane.
2 MR. ROSENBURG: Answer his question.
3 A. The understanding? Fluff.
4 BY MR. HAYES:
5 Q. But whether it's fluff or not, what
6 you understand him to be telling you is that
7 once we get this merger completed and everybody
8 gets their shares, we're going to make a lot of
9 money?
10 MR. ROSENBURG: Objection, foundation.
11 A. Everyone thinks they're going to make a
12 lot of money with their companies.
13 BY MR. HAYES:
14 Q. And that's what you understood him to be
15 saying here, correct?
16 MR. ROSENBURG: Objection, foundation.
17 BY MR. HAYES:
18 Q. Whether or not you agreed with it?
19 A. I don't know what he meant really. The
20 guy -- I don't know what he meant. He was always
21 making these statements.
22 Q. Okay.
23 A. I disregarded most of the statements that
24 he made after a point in time.

Page 196
1 Q. Did you ever speak with Mr. Robert Luiten?
2 A. Perhaps once or twice at the most. That
3 was it.
4 Q. Okay. And he was the CEO?
5 A. Yes.
6 Q. President of Par- -- of Zenergy?
7 A. Yes.
8 Q. Okay. But most of your conversations with
9 respect to Zenergy went through Mr. Gasich,
10 correct?
11 A. He had the same role -- my understanding
12 was that he had the same role with regards to
13 Zenergy as Scott Wilding had the same role with
14 regards to Vincent Cammarata and Paradigm.
15 Q. Okay. So, to answer my question then,
16 most of your conversations with respect to Zenergy
17 were with Mr. Gasich?
18 A. Substantially, yes.
19 Q. Okay. If you understood that Mr. Gasich
20 wasn't a shareholder of Zenergy, and he wasn't
21 an officer or director of Zenergy, what did you
22 understand his position to be with respect to
23 Zenergy?
24 A. As a consultant. And that's -- it's

Page 197

1 common. I work with many consultants to -- with
2 companies or directly with the CEO. It's kind of
3 one or the other.
4 Q. Right.
5 A. So it was not uncommon.
6 Q. And in this case you didn't really work
7 with the CEO, you worked with Mr. Gasich?
8 A. Exactly.
9 Q. Now, after the merger agreement was
10 consummated and the merger became effective,
11 what role, if any, did you have as an attorney
12 for the surviving company?
13 A. The agreement that I had was to provide
14 all of these transactional services, including the
15 share exchange agreement and the name change with
16 FINRA.
17 My understanding was that I would continue
18 on as counsel to work with them filing their
19 disclosure statement with OTC markets or
20 pink sheets then, but I was fired. I was pretty
21 much let go immediately after the transaction
22 closed.
23 Q. And who let you go? Who told you you were
24 fired?

Page 198

1 A. I believe it was Mr. Gasich. I'm not
2 100 percent sure, but I'm pretty sure.
3 Q. And what position, if any, did Mr. Gasich
4 have with the merged company?
5 A. He remained a consultant.
6 MR. HAYES: Could you mark this as
7 Plaintiff's Exhibit 40, please -- 41, please.
8 (Plaintiff's Deposition Exhibit
9 No. 41 marked for
10 identification.)
11 BY MR. HAYES:
12 Q. So Exhibit 41 is an email or I guess a
13 couple of emails, and it's Bates labeled DAL158.
14 And the top email is from Mr. Wilding
15 to you dated 6/1/2009. And the subject is
16 "Zenergy/PDGT," correct?
17 A. Yes.
18 Q. And then that email it appears Mr. Wilding
19 is forwarding you the earlier email between him
20 and Mr. Gasich dated May 31, 2009; is that fair?
21 A. Yes.
22 Q. Okay. And then it says -- the first
23 email says from Bob Gasich on Sunday, May 31, says
24 "Scott - I just spoke to Luiten. He would like to

Page 199

1 retain Diane Dalmy post merger to help assist in
2 documents that are necessary from our end once we
3 have completed the merger to avoid any loss in
4 momentum. Let me know your thoughts. Thanks,
5 Bob."
6 And then the next day Mr. Wilding forwards
7 that to you saying "Zenergy wants to hire you,
8 Diane. Send Bob whatever you send out to new
9 clients."
10 A. Uh-huh.
11 Q. Do you see that?
12 A. Yes.
13 Q. Do you recall receiving this email from
14 Mr. Wilding indicating that Zenergy wanted to
15 hire you post merger?
16 A. No, I don't, but it didn't last long.
17 Q. Okay. Did you have any subsequent
18 discussions with Mr. Luiten, Mr. Gasich or
19 Mr. Wilding regarding the provision of
20 legal services by you to Zenergy post merger?
21 A. Well, yes, I believe so. It was to
22 work on the name change and the symbol change
23 and to move on to pink sheets with a disclosure
24 statement.

Page 200

1 Q. So I guess my question to you is was
2 there something that occurred after your receipt
3 of this email from Mr. Wilding where somebody said
4 to you hey, Diane, we really want to limit what
5 you're doing in this case to the name change,
6 the disclosure statement, and you're not going to
7 represent the company on anything else?
8 A. I don't recall the day of that
9 conversation or the actual date, I should say,
10 of that conversation, but it was pretty close to
11 the final consummation of the transaction.
12 And I was totally, I don't know, for
13 better words blown away that I was terminated
14 because they told me I had provided good services.
15 I have no idea what their reasoning was, but I was
16 terminated.
17 Q. So, I mean, when you received this email,
18 Exhibit 41, it was your understanding that going
19 forward you were going to continue to provide
20 legal services to the surviving company?
21 A. That's, typically, yes, with many of my
22 clients. And in these circumstances I don't
23 recall this email, but yes, I was of the complete
24 understanding that I would remain as counsel to

Page 201
1 the company moving forward.
2 Q. So at some point after this, somebody
3 contacts you and says Diane, your services aren't
4 going to be needed any longer?
5 A. Just like that, yes.
6 Q. And you don't remember exactly who that
7 was?
8 A. I believe it was Robert Gasich, yes.
9 Q. And tell me as best you recall what did
10 Mr. Gasich tell you?
11 A. He said that we're no longer going to use
12 you, and I recall -- I do recall this conversation
13 because I was very upset.
14 And I said why? And he said well, it has
15 nothing to do with the quality of your services,
16 we're just going in a different direction with
17 different counsel.
18 I can tell you now why I surmise that
19 might have happened.
20 Q. And why is that?
21 A. I was asking a lot of questions. I
22 wanted a lot of documents on their business
23 operations. I wanted to see every contract. I
24 told them I wanted to see every -- each and every

Page 202
1 press release that went out.
2 When I represent my client, I try to get
3 as involved as possible. And I don't know. I
4 thought everything was fine, and then I was fired
5 just like that.
6 Q. And when do you think that occurred?
7 A. The firing?
8 Q. Yes.
9 A. Well, I know what the SEC has in its
10 statement or complaint, which I disagree with.
11 You said August. I believe it was mid June.
12 Q. Okay.
13 A. I'm not positive, but I do believe.
14 Because I remember it was so close to having just
15 done all of this work.
16 Q. And your first opinion letters is written
17 in connection with this case were mid June 2009.
18 A. So it was right after that then.
19 Q. Right after your first opinion letter?
20 A. Yes.
21 Q. And you were shocked and surprised by the
22 firing?
23 A. Yes.
24 Q. Angered?

Page 203
1 A. Upset.
2 Q. And it upset you --
3 A. Well --
4 Q. -- in part, because you thought you were
5 being diligent in asking for this information?
6 A. I was upset on two fronts.
7 Q. Okay.
8 A. One, because I had just -- and I think you
9 need to understand who I am and what I do.
10 I assist my clients. I'm here ethically
11 and morally to the best of my ability to represent
12 my clients.
13 And if they can pay me, if they can't
14 pay me, I stick it out. I have several thousands
15 of dollars in receivables.
16 And I was upset that I went to this
17 extent in representing this company, even though
18 it wasn't their legal fee, but Paradigm, and
19 ended up getting compensation in the form of
20 shares, which I did not want. And then agreed
21 to go ahead and represent them further, and then
22 just get arbitrarily dismissed without any
23 explanation.
24 Q. And although they didn't explain this

Page 204
1 to you, you surmised that the reason that you
2 were being fired was because you were demanding
3 information, specific information?
4 A. I was asking for a lot of information,
5 and I -- that thought crossed my mind. I don't
6 know if it was relevant, but that's what I thought
7 then.
8 I thought they didn't want to work with me
9 because I was asking for too many documents. It
10 just -- that was a thought.
11 Q. And, however, you did continue to provide
12 service, legal services?
13 A. Well, I finished up with the name change,
14 and then no, that was it.
15 Q. Well, and then you provided numerous
16 opinion letters to people?
17 A. Well, those opinions were paid for by
18 the respective shareholders. And I actually
19 called up, and I do believe I spoke with
20 Mr. Luiten asking if it was okay that I provided
21 opinion letters on behalf of these shareholders
22 for Zenergy.
23 Q. And so is that why in these subsequent
24 opinion letters you refer to yourself as special

Page 205

1 counsel to Zenergy?
2 A. Yes, for a better -- lack of
3 identification.
4 Q. Okay. Did it concern you at all -- I
5 mean, in connection with providing the subsequent
6 opinion letters, you had to rely on information
7 or you were relying on information provided to you
8 by the company, correct?
9 A. Yes.
10 Q. And when I say company, I mean Zenergy,
11 the surviving entity, correct?
12 A. Uh-huh. Yes.
13 Q. Yeah. Did it concern you at all that on
14 the one hand in mid June you had been fired as
15 counsel for Zenergy, and you believed it may have
16 had something to do with you demanding information
17 from the company?
18 Did that concern you at all when you were
19 providing the subsequent opinion letters to people
20 in which you had to rely on information provided
21 by the company?
22 A. No, because the basis for the opinions
23 were already established in the first opinion,
24 and I thought there were also, you know, other

Page 206

1 reasons.
2 I do have a home office, and some clients
3 don't necessarily like that after they get to a
4 point in their development, and I understand that.
5 That could have been another factor.
6 I -- it was never said. These are my
7 surmise-ations as far as why I was fired.
8 Q. But it didn't occur to you that maybe
9 since you were fired for asking for information,
10 that maybe the information that you had been
11 provided might be unreliable?
12 MR. ROSENBURG: Objection to the form. I
13 think it mischaracterizes her testimony.
14 A. That never crossed my mind.
15 BY MR. HAYES:
16 Q. When I say you had been fired for asking
17 for information, what I meant by that is you
18 believe that may have been one of the reasons why
19 you were let go?
20 A. It was in connection with drafting the
21 information statement. And, again, it was just --
22 it was a thought. It was a thought just as much
23 as I have a home office, maybe they don't like
24 that. I was baffled.

Page 207

1 Q. And the information statement you're
2 referencing, that was the information statement
3 that Paradigm filed after the merger?
4 A. That Zenergy filed with --
5 Q. I'm sorry, Zenergy filed after the merger?
6 A. With pink sheets, yes.
7 Q. And you helped prepare that information
8 statement?
9 A. No. I had absolutely no role in that. I
10 had absolutely no role in the preparation of any
11 of the press releases that were distributed or
12 disseminated by Zenergy. I didn't even know that
13 they had been released.
14 Q. But you were -- at some point you were
15 asking for information from Zenergy with the
16 expectation that you might be preparing --
17 A. Yes.
18 Q. -- the information statement?
19 A. Yes. That was gearing up.
20 Q. But it never happened?
21 A. Right. Nothing ever happened.
22 Q. Because when you asked for that
23 information, rather than give it to you at
24 some point, you were terminated after that?

Page 208

1 A. That's -- yeah. Whether the two are
2 interrelated, I don't know, but that's what
3 happened.
4 Q. Ms. Dalmy, we've talked about some of
5 these. And I just want to put some of them in
6 front of you and ask them -- ask you to verify
7 that you prepared these. And these are some of
8 the opinion, Rule 144 opinion letters.
9 MR. HAYES: So if you could mark that as
10 Plaintiff's Exhibit 42.
11 (Plaintiff's Deposition Exhibit
12 No. 42 marked for
13 identification.)
14 BY MR. HAYES:
15 Q. All right. Ms. Dalmy, can you identify
16 Plaintiff's Exhibit 42?
17 A. Yes.
18 Q. What is it?
19 A. It's the opinion that I wrote.
20 Q. It's one of them?
21 A. The first one.
22 Q. It's dated June 12, 2009?
23 A. Yes.
24 Q. Okay. And in there were some errors in

Page 209

1 this opinion letter, correct?
2 A. Errors?
3 Q. Some inaccurate information, correct?
4 A. Could you please identify what you mean?
5 Q. Sure. So, for instance, on the first
6 page there, the second sentence, it says
7 "The Zenergy Debt is evidenced by and reflected
8 in the financial statements of Zenergy as of
9 June 2006..." Do you see that?
10 A. That's an error.
11 Q. That's wrong, correct?
12 A. Yes.
13 Q. "As at June 2006, Zenergy and Gasich
14 verbally agreed and established that Zenergy Debt
15 could be convertible at Gasich's sole option into
16 shares of common stock of Zenergy at
17 $0.0001 percent per share." Do you see that?
18 A. Uh-huh.
19 Q. And in that statement "As at June 2006,
20 Zenergy and Gasich verbally agreed," that's
21 incorrect, right?
22 A. No -- well, the date is incorrect.
23 Everything else is correct. It was April 2008.
24 Q. There was no verbal agreement as of

Page 210

1 June 2006?
2 A. No.
3 Q. Okay. So that's inaccurate.
4 If you look on page 2, paragraph number 2
5 at the bottom, it says "In connection with this
6 opinion, I have examined the following: Number 2,
7 Board of Director Resolutions of the Corporation
8 dated June 3, 2009:"
9 And then "(v) approving the issuance of
10 the aggregate of 840,000 shares" of Zenergy --
11 "of common stock to the Assignees." Do you see
12 that?
13 A. Yes.
14 MR. ROSENBURG: You know, I don't see it.
15 Where is it?
16 MR. HAYES: Page 2, little -- paragraph 2.
17 MR. ROSENBURG: Yes. Okay.
18 BY MR. HAYES:
19 Q. And that's in error too, right? It was
20 on --
21 A. Yes, I believe this was a draft. And I
22 believe at the time I was having computer problems
23 with saving drafts, so I recall that.
24 Q. So you don't think you actually sent --

Page 211

1 is it your testimony you didn't send this opinion
2 letter dated June 12, 2009, to Pacific Stock
3 Transfer, Inc.?
4 A. It wasn't the final opinion that I sent.
5 Q. Okay.
6 A. I do recall sending them a draft opinion
7 asking to talk about it.
8 Q. You sent Pacific Stock Transfer, Inc., a
9 draft opinion?
10 A. Yes. Well, I don't recall. I mean, I
11 do recall that -- because at times if I am
12 familiar with the transfer agent -- and I am with
13 Pacific Stock, I know them, I know the people who
14 work there.
15 And I don't recall if I specifically did
16 it, but at times I have sent drafts of opinion
17 letters to the transfer agent letting them know
18 that, you know, this is coming, give this a
19 cursory review. Do you think you need other
20 material in order to issue the shares?
21 Q. And is it your testimony that that's what
22 happened here with respect to this --
23 A. I can't recall.
24 Q. All right. On the second page if you

Page 212

1 look at that first paragraph, it identifies the
2 assignees that this opinion letter relates to.
3 A. Yes.
4 Q. And the first one is Downshire Capital;
5 is that right?
6 A. Yes.
7 Q. And that's Mr. Ryan's company, correct?
8 A. Yes, it is.
9 Q. Okay. And 2 is Skyline Capital
10 Investments, correct?
11 A. Yes.
12 Q. And that's Mr. Wilding's company?
13 A. That's correct.
14 Q. And then number 3 is Sigma Consulting
15 Group, Inc.; do you see that?
16 A. Yes.
17 Q. Do you know who owns an interest in that
18 company?
19 A. No, I don't.
20 Q. Number 4 is Romero Kiep or Kiep, K-i-e-p.
21 A. Uh-huh.
22 Q. Do you know Mr. Kiep?
23 A. No, I don't.
24 Q. And number 5 is Kymberly Nelson; do you

Page 213

1 see that?
2 A. Yes.
3 Q. Kymberly Nelson was Mr. Gasich's [redacted]
4 [redacted] at the time, did you know that?
5 A. No, I did not.
6 Q. And Javorka Gasich, did you see that?
7 A. Yes..
8 Q. That's number 6 there, Roman numeral VI?
9 A. Right.
10 Q. She has the same last name as
11 Mr. Robert Gasich, correct?
12 A. Yes.
13 Q. Do you know what relationship, if any, she
14 had with Mr. Robert Gasich?
15 A. I don't recall, but that was certainly one
16 of -- related to the affiliate definition.
17 Q. Okay. So is that something you looked
18 into?
19 A. Yes, but I don't recall who she was or
20 what.
21 But I recall that when I saw her on the
22 initial list, that that was one of -- that's,
23 again, one of the reasons why we had our
24 multiple conversations of the definition of

Page 214

1 affiliate.
2 Q. And so you investigated to determine out
3 whether -- to determine whether Ms. Javorka Gasich
4 was a relative of Robert Gasich?
5 A. I didn't even know Javorka was female or
6 masculine, but I recall asking about -- you know,
7 telling him about affiliate status.
8 Q. So regardless of whether it was a she
9 or a he or you understood whether it was a he or
10 a she, did you try to determine whether or not
11 Ms. Javorka Gasich was a relative of Bob Gasich?
12 A. To make sure that this person wasn't his
13 spouse or living under the same roof.
14 Q. Okay. But did you make a determination?
15 Did you investigate -- so you did investigate
16 whether --
17 A. I asked, yes.
18 Q. Okay.
19 A. Yes.
20 Q. And what were you told?
21 A. I was told that none of these people are
22 related. These are people who all performed
23 services.
24 Q. Okay. And who told you that?

Page 215

1 A. Mr. Gasich.
2 Q. And did you -- Mr. Gasich apparently told
3 you that Javorka Gasich was not related to him,
4 did you believe that?
5 A. I -- yes. I believed everything that
6 people tell me.
7 Q. Except Mr. Wilding, right?
8 A. Towards the end with Mr. Wilding, because,
9 yeah, he just -- at the beginning, no, I
10 completely trusted him. Of course, I ascertain
11 to the best of my ability the truthfulness of
12 statements.
13 But no, I trusted him until the end when,
14 you know, he was just so flagrant.
15 Q. It didn't occur to you at all that maybe
16 Mr. Gasich was lying to you when he said that
17 Javorka Gasich and he bore no relationship to
18 each other?
19 A. No. It never occurred to me that
20 Mr. Gasich was lying ever.
21 Q. Do you know anybody else with the last
22 name Gasich?
23 A. He apparently had an extended family was
24 my understanding.

Page 216

1 Q. Well, right. So my question is didn't it
2 occur to you, if you had that understanding, that
3 one of these people, in particular Javorka Gasich,
4 might be related to him?
5 A. Well, I assumed it was a relationship,
6 yes, but he had an extended family. That's -- he
7 said he had an extended family.
8 Q. All right. So you knew, then, that
9 Javorka Gasich was a relative of Mr. Gasich?
10 A. By virtue of the last name somehow.
11 Q. Yes. Okay. So at the time that you
12 prepared your opinion letter, it was your
13 understanding that Mr. Gasich and Javorka Gasich
14 were relatives in some form or fashion?
15 A. Yes. Yes.
16 Q. And did that concern you at all about
17 whether it was appropriate to issue a Rule 144
18 opinion letter with respect to the assignment of
19 shares from Mr. Gasich to Javorka Gasich?
20 A. I just remember, again, confirming
21 affiliate status as far as in relationship to
22 holding shares and telling him that no one could,
23 again, live in the same household as him holding
24 shares or be an officer or director as far as the

Page 217
1 definition of affiliate.
2 I don't recall any specifics about
3 discussions regarding Javorka.
4 Q. Okay. The next one is Nenad Jovanovich.
5 Do you see that?
6 A. Uh-huh. Yes.
7 Q. Do you know who Nenad Jovanovich is?
8 A. No, I don't.
9 Q. Did you make any inquiry before you
10 agreed to write an opinion letter on behalf of
11 Nenad Jovanovich to determine who that person was?
12 A. That they were all, again, assignees who
13 had performed and provided services to Zenergy and
14 weren't going to be compensated.
15 Q. What services did you understand that
16 Nenad Jovanovich provided to Zenergy?
17 A. Nothing specifically in relationship
18 to any individual person.
19 But in terms of the group -- and this
20 is quite common as far as assignment of debt
21 whenever this has been a part of a transaction.
22 And that is that you've got a number of five, six,
23 seven people who have provided services, and this
24 is how they're compensated. So this wasn't odd to

Page 218
1 me.
2 Q. Okay. So in your practice it was not
3 unusual for you to see that people would be
4 listed as consultants for issuers and receive
5 assignments of stock in compensation for their
6 consulting services?
7 A. Not unusual.
8 Q. Okay. In fact, it was something that you
9 see frequently?
10 A. I wouldn't say frequently, but it's
11 something -- it's a factor that if I'm approached
12 by a client, a private company, who is looking
13 for a public vehicle to merge into, I work with
14 brokers who have these companies, and there is
15 always a litany of requirements as far as
16 deliverables, price, et cetera. And sometimes
17 convertible debt is definitely a factor for this
18 reason.
19 Q. So the use of convertible debt to
20 compensate consultants who are involved in
21 reverse mergers is something that is customary
22 for your practice?
23 A. Yes, it is. Not only consultants, but
24 the web designers, the financiers -- not the

Page 219
1 financiers, the administrative people, the
2 managerial, technology, IP.
3 Q. And if, excuse me -- but with respect to
4 this particular transaction, you don't know what
5 specific consulting services any of these
6 assignees provided?
7 A. No, not specifically.
8 But as a group I was told these people are
9 the individuals who have provided considerable
10 amount of -- this quote/unquote considerable
11 amount of services to Zenergy uncompensated for a
12 period, quite a period of time.
13 Q. And if these assignees hadn't completed
14 their consulting arrangements with the company,
15 would that affect the holding period that applies
16 under Rule 144?
17 A. No. I would presume that many of them
18 were still engaged in such capacity with an
19 ongoing relationship.
20 Q. Isn't it fair to say, though, that if
21 the convertible debt or securities are going to be
22 provided as compensation for consulting services,
23 that the consulting services would have had to
24 have been fully provided before the --

Page 220
1 A. Well, certainly there has to be
2 consideration. So whatever those unpaid,
3 earned consulting fees were, that's what
4 constituted the consideration as far as this
5 debt as far as acquiring the interest of this
6 debt.
7 Do they still continue on in such
8 capacity? Probably.
9 Q. So did you have an understanding as to
10 whether or not the amounts of the assignments here
11 reflected consulting services already provided or
12 consulting --
13 A. They were provided, already provided, yes.
14 Q. And what was the basis for that
15 understanding?
16 A. The statement from Mr. Gasich that the
17 company owed these services -- or owed this debt
18 for the services rendered. And I know Mr. Luiten
19 was also apprised of that as far as this opinion.
20 Q. How do you know that?
21 A. Well, I know he provided approval to a
22 subsequent opinion, and as far as -- I can't
23 recall if he was a conversation.
24 I don't believe I ever emailed him, so I

Page 221

1 believe it was a conversation or -- I mean, I just
2 don't recall.
3 MR. HAYES: All right. Could you mark
4 this as Plaintiff's Exhibit 43, please.
5 (Plaintiff's Deposition Exhibit
6 No. 43 marked for
7 identification.)
8 BY MR. HAYES:
9 Q. Ms. Dalmy, if you could look at
10 Plaintiff's Exhibit 43 and let me know if you
11 recognize this document.
12 A. Yes. It's the opinion.
13 Q. This is a subsequently dated Rule 144
14 opinion prepared by you dated June 15, 2009,
15 correct?
16 A. Uh-huh. Yes.
17 Q. And this relates to the same assignees
18 that we just looked at in Plaintiff's Exhibit 42,
19 correct?
20 A. Yes.
21 Q. This, however, contains some different
22 information than Plaintiff's Exhibit 42, namely
23 a description of the Zenergy debt?
24 A. Yes.

Page 222

1 Q. All right. And this one, the second
2 sentence, the first paragraph says "The Zenergy
3 Debt is evidenced by and reflected in the
4 financial statements of Zenergy as of April 17,
5 2008." Do you see that?
6 A. Yes.
7 Q. Now, I'm wondering what happened between
8 June 12, 2009, and June 15, 2009, to motivate you
9 to change the date of the debt from June 2006 to
10 April 17, 2008?
11 A. Because that was the accurate date of the
12 date the debt was incurred.
13 Q. And what happened? I mean, did
14 somebody tell you hey, Diane, you got it wrong on
15 Plaintiff's Exhibit 42?
16 A. Yes. I believe that Exhibit 42 was a
17 draft, and this is the signed, finalized copy.
18 Q. Okay. So on June 12th you prepared a
19 draft where the date of the debt is June 2006?
20 A. Which was in error.
21 Q. Okay. An error caused by what? I'm
22 trying to figure it out.
23 Did you at that time believe the debt was
24 dated June 2006?

Page 223

1 A. No. It was just an error. I don't recall
2 why I made the error. I made the error.
3 (Discussion held off the
4 record.)
5 BY MR. HAYES:
6 Q. All right. Ms. Dalmy, if you could turn
7 back to Plaintiff's Exhibit 38.
8 A. Thirty-eight?
9 Q. Yes.
10 A. What was 38?
11 Q. I'm sorry. It's the email dated June 4,
12 2009, from Mr. Gasich to you.
13 A. Yes.
14 Q. All right. Do you have that?
15 A. Yes.
16 Q. Okay. It starts out "Diane, here are 3 of
17 the 4 debt assignments..."
18 A. Uh-huh.
19 Q. Do you see that?
20 A. Uh-huh. Yes.
21 Q. Okay. And this is an email from
22 Mr. Gasich, correct?
23 A. Yes.
24 Q. And Mr. Gasich, he was the holder of

Page 224

1 the debt that ultimately was converted to shares,
2 correct?
3 A. Yes.
4 Q. All right. So certainly Mr. Gasich, if
5 anyone, would have an understanding of when that
6 debt was incurred, correct?
7 A. Yes.
8 Q. If you could look down at the bottom
9 where he says "I believe we have the following
10 open items:"
11 A. Uh-huh.
12 Q. And number 2 there, he's asking you to
13 prepare a copy of Zenergy's board of directors --
14 I'm sorry.
15 "Can you prepare a copy of Zenergy's board
16 of directors resolution ratifying the Zenergy Debt
17 and terms thereof. If we don't have, we will need
18 to prepare with current date but effective
19 May 2007..." Do you see that?
20 A. Uh-huh.
21 Q. "...the date of the note. Please adjust
22 date on legal opinions." Do you see that?
23 A. Uh-huh.
24 Q. Okay. So Mr. Gasich on June 4, 2009, is

Page 225
1 telling you that the date of the Zenergy debt,
2 his Zenergy debt, is May 2007, correct?
3 A. Yes, that appears so.
4 Q. Okay.
5 A. I mean, there was no note, so the date of
6 the note I --
7 Q. Well, you ultimately -- I mean,
8 ultimately they prepared a backdated convertible
9 note, correct?
10 A. That assumes so. I had absolutely no role
11 in drafting or preparing any such note.
12 Q. Well, didn't you provide Mr. Gasich with
13 the template for the note?
14 A. At his request to utilize for future debt
15 quote/unquote.
16 Q. Okay. And is it your testimony that
17 neither Mr. Gasich or Mr. Luiten or anybody else
18 provided you with a copy of that convertible note
19 after it was prepared by them?
20 A. I received a copy of that note. I have
21 no idea when I received it, how I received it.
22 I gave it to the SEC in my production of
23 documents, but I had no knowledge of an actual,
24 physical note.

Page 226
1 And my opinions never referenced any
2 note, nor did I think there was a legal
3 requirement to have such a note. And the share
4 exchange agreement and other representations
5 referenced debt.
6 I made sure the conversion notices
7 referenced debt. There was no note, as far as
8 I was concerned, in my mind.
9 Q. Okay. So but at some point Mr. Gasich or
10 somebody provided to you a copy, a written copy,
11 of a convertible note that indicated that the
12 Zenergy debt that was going to be used for
13 conversion was dated in April of 2008.
14 A. I was apprised of that date well before
15 any note that was ever provided to me that I
16 don't recall ever receiving.
17 Q. But you do recall that there were --
18 there was such a note prepared that indicated
19 the date of Gasich's debt with Zenergy was
20 April 2008?
21 A. Say that again, please.
22 Q. I thought you said you indicated you
23 know that you did receive a copy of a written
24 convertible note at some point that reflected --

Page 227
1 A. Because I gave it to the SEC. I have
2 no idea how I received that, when I received that,
3 who sent that to me, who prepared it. I have no
4 idea.
5 And when I look at that note, it's not --
6 it's my template, but it's not my note.
7 Q. When was the first time you realized that
8 you had this note in your files?
9 A. When the SEC asked for production of all
10 of the documents.
11 Q. As part of the original investigation?
12 A. Uh-huh. And I gave it to you, yes.
13 Uh-huh.
14 Q. So in connection with -- so sometime after
15 receiving the SEC's investigative subpoena in this
16 matter, you did a review of your files?
17 A. Yes, I did. Every email that I had,
18 everything on my hard drive as far as documents
19 that I had saved because I didn't have my box, and
20 I sorted every email.
21 And so what I did is I printed out
22 every email that I could find, and then organized
23 everything, and then when I sent it off, there it
24 was.

Page 228
1 Q. And so were you shocked when you saw it?
2 A. Yeah.
3 Q. Where did this come from, right?
4 A. Yeah, what the hell pretty much. But I
5 gave it to the SEC because it was there somewhere,
6 I don't know, in one of those emails.
7 Q. And before that you had never seen this
8 document?
9 A. No. There was no note. I am so emphatic
10 about that. And I'm so upset about that.
11 Q. Why? Why are you upset?
12 A. Because I don't ever backdate anything.
13 They backdated that note and they used me.
14 Q. Well, somebody provided it to you, right?
15 A. I don't know who did, but if I drafted
16 that note, and I have drafted notes that have
17 evidence debt in the past, I draft convertible
18 notes that evidence debt that's occurred now. And
19 I have whereas clauses in all of my notes that
20 state this debt was incurred because of this
21 wire received by this company for this reason for
22 working capital purposes. I would have put for
23 debt that was incurred 2 years ago.
24 This note evidences debt that was incurred

Page 229

1 for this reason on this date as evidenced by
2 whatever. My notes are thorough.
3 And that template, it was a template that
4 I provided at their request to help them out for
5 future debt.
6 Q. And at the time you provided that template
7 to them, you, I think, indicated you had already
8 been apprised that the Bob Gasich debt was dated
9 in April of 2008?
10 A. I don't recall the timing of that, but
11 I recall discussing the debt in detail with
12 Mr. Gasich and then looking at financial
13 statements that were for April 2008 that he said
14 evidences the existence of this debt, and this
15 debt still exists.
16 And that's when I put it in the share
17 exchange agreement and in board resolutions as far
18 as trying to make sure that I had every officer
19 and director signing off acknowledging this debt
20 and the fact that it existed.
21 Q. And so when Mr. Gasich subsequently sent
22 you an email dated June 14th -- or June 4th, as we
23 see in PX 38, asking you to prepare a board
24 resolution ratifying the debt with a date of

Page 230

1 May 2007, the date of the note.
2 A. I have no idea what he meant there.
3 Q. So what did you do when you got this
4 instruction from Mr. Gasich?
5 A. I drafted my board resolutions that did
6 not refer to any note and that referred to a
7 debt as of April 17, 2008, or at least I say
8 April -- I don't recall, but April 2008.
9 Q. Okay. And so then when you prepared
10 the -- subsequently prepared nine days later or
11 eight days later the June 12th opinion letter
12 saying that the date of the debt was June 2006 --
13 A. That was --
14 Q. -- where did that come from?
15 A. Maybe quite possibly a template, because
16 I don't draft these all anew. I will use a prior
17 opinion.
18 And this was a draft. And I -- it was an
19 error.
20 Q. So in preparing these Rule 144 opinion
21 letters, you use a template? You start with a
22 template?
23 A. Yes, I do. And -- yes.
24 Q. And so how many other Rule 144 opinion

Page 231

1 letters that you prepared where the debt
2 referenced is a $30,000 convertible note?
3 A. There was no note.
4 Q. Okay. Well, convertible debt.
5 On how many prior occasions or other
6 occasions have you prepared Rule 144 opinion
7 letters using $30,000 convertible debt,
8 convertible debt in the amount of $30,000?
9 A. Well, I don't recall, but the error is
10 clear it's not the amount of the debt, but the
11 date.
12 So I could have used some template that
13 just had that date in there. I don't know. I
14 don't know why or how I made that error on that
15 opinion. It was a draft.
16 And the opinion that was finalized was
17 this opinion that is signed by me, and that
18 specified the date as of April 17, 2008, and
19 has the factors listed on page 3, "Assignee shall
20 be deemed to have the shares held in excess of
21 one year from the date of April 17th" and the
22 assignees.
23 But that is the date that I was apprised
24 of as far as Gasich telling me that was the date

Page 232

1 the debt was incurred and at the same time had a
2 verbal agreement with the company to convert.
3 Q. Okay. So I guess let me understand that
4 the two -- that the sources for your understanding
5 about the date of the convertible debt held by
6 Mr. Gasich were, one, Mr. Gasich himself?
7 A. Yes.
8 Q. And, two, April 2008 financial statements
9 for Zenergy?
10 A. Yes. I saw those. And the fact that
11 board resolutions and the share exchange agreement
12 as far as representations.
13 Q. But you prepared those?
14 A. Yes.
15 Q. You prepared those --
16 A. Based on --
17 Q. -- based on representations from
18 Mr. Gasich?
19 A. Yes, that were reviewed and signed off
20 by everyone.
21 Q. And based on these April 2008 Zenergy
22 financial statements?
23 A. Uh-huh.
24 Q. Is that right?

Page 233

1 A. Yes.
2 Q. And other than Mr. Gasich's
3 representations in the April 17th -- or the
4 April 2008 financial statements, you had no
5 other information regarding the date of the
6 convertible debt held by Mr. Gasich?
7 A. No. That was it.
8 Q. Okay. And the financial statements,
9 the April 2008 financial statements, you no
10 longer have because they were in the box that was
11 destroyed in the flood?
12 A. Well, we -- we have them. I don't have
13 them personally.
14 Q. Okay. Have you seen them recently?
15 A. Yes.
16 Q. When's the last time you saw them?
17 A. The other day.
18 Q. Okay. Was that in connection with the
19 preparation from --
20 A. Yes.
21 Q. With your counsel?
22 A. Uh-huh. Uh-huh.
23 Q. And so -- but you hadn't received it --
24 you received them in connection with this

Page 234

1 litigation?
2 A. Yes. I believe they were on the CD of
3 the SEC production of documents to me that I
4 couldn't open any documents.
5 Q. Okay. So how do you -- then did you --
6 A. And I was working on this, you know, this
7 was the weekend I designated. And I emailed
8 Mike MacPhail very upset that I could open no
9 documents on the CD from the SEC. And I said I'm
10 specifically looking for the April 2008 financial
11 statements.
12 Q. And then did Mr. MacPhail provide those to
13 you?
14 A. Yes, he did.
15 Q. And you didn't look at any subsequent
16 financial statements of the company Zenergy?
17 A. I don't recall. I mean, I don't
18 specifically recall. They're there, but I
19 don't specifically recall looking at those.
20 I do recall just saying so this debt still
21 exists to Mr. Gasich.
22 MR. HAYES: All right. If you could mark
23 this as Plaintiff's Exhibit 44.
24 (Plaintiff's Deposition Exhibit

Page 235

1 No. 44 marked for
2 identification.)
3 BY MR. HAYES:
4 Q. Ms. Dalmy, could you identify Plaintiff's
5 Exhibit 44?
6 A. This is an opinion.
7 Q. And this is a Rule 144 opinion dated
8 June 15, 2009, that you prepared, correct?
9 A. Yes.
10 Q. And this one was prepared in connection
11 with the assignment of shares from Mr. Gasich to
12 Mr. Cammarata, correct?
13 A. Yes.
14 MR. HAYES: Could we take a break. I need
15 to get a stapler.
16 THE VIDEOGRAPHER: Off the record at
17 3:57 p.m.
18 (Recess taken from 3:57 p.m. to
19 4:09 p.m.)
20 THE VIDEOGRAPHER: Back on the record with
21 tape number five at 4:09 p.m.
22 MR. HAYES: Could you mark that as
23 Plaintiff's Exhibit 45, please.
24 (Plaintiff's Deposition Exhibit

Page 236

1 No. 45 marked for
2 identification.)
3 BY MR. HAYES:
4 Q. Ms. Dalmy, if you could take a look at
5 Plaintiff's Exhibit 45, which is -- the cover
6 page there is an email or two emails actually.
7 And then attached are several documents
8 relating to the June 15th Rule 144 opinion
9 letters that you wrote that we looked at earlier.
10 Okay?
11 A. Yes.
12 Q. So the first -- the bottom email on the
13 first page is an email from you to Scott Wilding,
14 Bob Gasich and Vincent Cammarata cc'd dated
15 June 16, 2009. Do you see that?
16 A. Yes -- no, wait. I'm sorry, June 20th?
17 Q. June 16, 2009, the email from you.
18 A. Oh, okay. Yes.
19 Q. Okay. And it says "Attached is the
20 Rule 144(b) opinion and the Rule 144 opinion for
21 your submission to the transfer agent with
22 supporting documentation." Do you see that?
23 A. Uh-huh.
24 Q. Is that a yes? I'm sorry.

Page 237

1 A. Yes.
2 Q. Okay. And the Rule -- just to clarify,
3 the Rule 144(b) opinion is the June 15, 2009,
4 opinion relating to Mr. Cammarata, correct?
5 A. Yes.
6 Q. Okay. And the Rule 144 opinion is the
7 opinion relating to the other assignees, correct?
8 A. Yes.
9 Q. Okay. And you sent those opinions with
10 supporting documentation to Mr. Wilding,
11 Mr. Gasich and Mr. Cammarata so that they could
12 provide them to the transfer agent, correct?
13 A. Yes.
14 Q. And if you look up above, the email above
15 is Mr. Wilding sending the -- your email with the
16 attachments to Yvonne Mui. Do you recognize that
17 name?
18 A. No.
19 Q. Okay. Is Ms. Mui with a transfer agent?
20 A. She's not one I worked with.
21 (Discussion held off the
22 record.)
23
24 BY MR. HAYES:

Page 238

1 Q. All right. Mr. Helms advises me I
2 may have misspoke.
3 The Rule 144(b) opinion is in relation to
4 the assignees other than Mr. Cammarata; is that
5 correct?
6 A. That's correct.
7 Q. And the 144 opinion is with respect to
8 Mr. Cammarata?
9 A. Yes.
10 Q. Okay. I'm sorry for that.
11 If you look at the attachments to your
12 email, well, first of all, your email has got a
13 stamp, a date and time stamp, on the front page,
14 the first page, 2009/06/22, 8:57. Do you see
15 that?
16 A. Uh-huh.
17 Q. Okay. Do you recognize that date and time
18 stamp at all?
19 A. No. Uh-uh.
20 Q. Have you seen date and time stamps like
21 that on other documents in the course of your
22 work?
23 A. No.
24 Q. All right. And then the next page also

Page 239

1 has a date and time stamp, the same date, same
2 time. Do you see that?
3 A. Uh-huh.
4 Q. Is that a yes?
5 A. Yes.
6 Q. Okay. And there's a few pages of your
7 Rule 144 opinion letter with your signature page
8 at the end on the third page.
9 And then the 144(b) opinion letter, again,
10 same date and time stamp at the bottom. Do you
11 see that?
12 A. Yes.
13 Q. And it includes pages 1, 3 and 5 of your
14 opinion letter.
15 A. Uh-huh.
16 Q. Along with this signature -- followed by
17 a signature page. Do you see that?
18 A. Yes.
19 Q. All right. And then attached there also
20 with the date and time stamp is an April 7, 2008,
21 convertible promissory note. Do you see that?
22 A. Yes.
23 Q. Okay. This is a copy of the written
24 convertible promissory note between Mr. Gasich

Page 240

1 and Zenergy, correct?
2 A. It appears so.
3 Q. And this was a document that you
4 attached to your Rule 144 opinions and provided
5 to Mr. Wilding and Mr. Gasich and Mr. Cammarata on
6 June 16, 2009; isn't that correct?
7 A. I don't recall that at all.
8 Q. Because, in fact, your testimony earlier
9 was that --
10 A. Yeah.
11 Q. -- you didn't see this not until --
12 A. That's true.
13 Q. -- after the SEC's investigation and you
14 received a subpoena from the SEC?
15 A. Uh-huh.
16 Q. Is that correct?
17 A. That's correct.
18 Q. Okay. So do you have any understanding
19 as to how this note became appended to your email
20 sent to Mr. Gasich, Mr. Wilding and Mr. Cammarata?
21 MR. ROSENBURG: I'm going to object. I
22 don't know if there's anything indicating that it
23 is appended to her email, other than a staple to
24 it.

Page 241

1 BY MR. HAYES:
2 Q. Well, see on the cover page of her email
3 where it says "Attached is the Rule 144(b) opinion
4 and the Rule 144 opinion for your submission to
5 the transfer agent with supporting documentation"?
6 Is this the supporting -- this is --
7 the convertible note is one of the pieces of
8 supporting documentation, correct?
9 A. I have no idea how this -- because I
10 didn't use this and I didn't rely on this.
11 Q. And this is that form note -- this is your
12 form, correct?
13 A. Yes, it is my form.
14 Q. Okay. And the other piece of supporting
15 documentation attached to this is the assignment
16 of debt from Mr. Gasich to Skyline Capital and the
17 conversion notice, correct?
18 MR. ROSENBURG: Well, I'm going to object.
19 Again, is it attached via staple or actually
20 attached to the email?
21 Because, again, I don't see anything
22 indicating it was attached to the email.
23 MR. HAYES: I'm going off the email,
24 which -- her email, which it indicates she's

Page 242

1 attaching the Rule 144 opinions to her email with
2 the supporting documentation.
3 MR. ROSENBURG: Right. But it doesn't say
4 that this is one of the pieces of supporting
5 documentation that's attached.
6 MR. HAYES: It doesn't say that. And
7 I guess the question is for Ms. Dalmy to answer
8 whether she has any reason to believe that it
9 wasn't attached.
10 A. I do have every reason to believe that it
11 wasn't attached, because if there had been a note,
12 A, I would not have a date of April 7, 2008, on
13 it, and I would have referenced such a note in my
14 opinion.
15 BY MR. HAYES:
16 Q. Okay. What document, what supporting
17 documentation are you referring to in your --
18 A. I don't know. I don't recall this email,
19 nor why I wouldn't submit this directly to the
20 transfer agent.
21 Q. Well, what is your practice?
22 Is your practice normally to submit your
23 144 opinions to the transfer agent?
24 A. Yes. Directly to the transfer agent, yes.

Page 243

1 Q. Okay. It's clear here that you provided
2 this document to Mr. Wilding and Mr. Gasich and
3 Mr. Cammarata with a statement that says there
4 "for your submission to the transfer agent,"
5 correct?
6 A. Uh-huh.
7 Q. So clearly in this instance you are
8 operating outside your normal practice; is that
9 fair to say?
10 A. Yes.
11 Q. And I wonder why what is. Why would you
12 deviate from your normal practice?
13 A. I don't know. I don't recall sending this
14 email. I don't recall having any note. I didn't
15 have a note on hard drive to attach as an exhibit.
16 So I don't know why I would have sent this. I
17 don't recall having discussions.
18 But I had already provided my opinion
19 letter directly to the transfer agent.
20 Q. Oh, so this was in addition. So as of the
21 time that you sent this email dated June 16, 2009,
22 and identified as Plaintiff's Exhibit 45, you had
23 already yourself sent your opinion letters
24 directly to the transfer agent?

Page 244

1 A. Yes.
2 Q. Did you attach this -- the documentation,
3 supporting documentation, for your opinion
4 letters?
5 A. I don't recall, but I certainly didn't
6 attach any note.
7 Q. What is your practice when sending
8 Rule 144 opinion letters to transfer agents? Is
9 it to just send the letter or is it to send the
10 letter and supporting documentation?
11 A. No. It's typically to send the letter and
12 then wait to see what they request for supporting
13 documentation.
14 MR. HAYES: Okay. Would you mark this as
15 Plaintiff's Exhibit 46.
16 (Plaintiff's Deposition Exhibit
17 No. 46 marked for
18 identification.)
19 BY MR. HAYES:
20 Q. Ms. Dalmy, Plaintiff's Exhibit 46 is a
21 series of emails between you and a Michael Cruz
22 and others at Scottsdale Capital. Do you see
23 that?
24 A. Yes.

Page 245

1 Q. Okay. And the emails are dated June 1,
2 2009; is that fair?
3 A. Yes.
4 Q. All right. The first email at the bottom
5 half of the page from Mr. Cruz to you and cc-ing
6 Joe Padilla and Andrea Bruno has a subject line
7 "Paradigm Tactical Products - 144 Legal Opinion
8 (Downshire Capital and Kymberly Nelson.)" Do you
9 see that?
10 A. Yes.
11 Q. It says "Hi Diane, I am counsel for
12 Scottsdale Capital, a registered broker-dealer. I
13 understand you wrote the 144 opinion concerning
14 the PTPC shares held by our brokerage clients
15 Downshire Capital and Kymberly Nelson. In order
16 to process our clients' sell orders, I am
17 requesting clarification with respect to the
18 debt conversion and affiliate status of the
19 assignee, Robert Gasich." Do you see that?
20 A. Yes.
21 Q. All right. So the first question he's got
22 is regarding the convertible debt. Do you see
23 that?
24 A. Uh-huh. Yes.

Page 246

1 Q. And so if you could just review without
2 me reading into the record what he writes there
3 and just give me a summary of what your
4 understanding is as to what he was asking for
5 regarding the convertible debt.
6 A. He was asking about the tacking period.
7 Q. And specifically what was he asking about?
8 A. I have to read this. Hold on.
9 Q. Sure.
10 A. Well, he was asking about an amendment
11 to the verbal agreement, which there was no
12 amendment.
13 At the time the debt was incurred, there
14 was an agreement at that time that it could be
15 converted. And then he asked about the
16 consideration.
17 Q. So my understanding of what he's asking
18 about is that in connection with Rule 144,
19 if there is a debt that exists that is not
20 convertible at the time this debt arises, and
21 it becomes convertible later by agreement,
22 there's got to be separate consideration for that
23 agreement to convert, correct?
24 A. Correct.

Page 247

1 Q. And the holding period begins at the time
2 the consideration is paid to convert?
3 A. To convert, yes.
4 Q. Okay. However, if the debt when it arose
5 contained a feature or provision or a term that
6 allowed for cashless conversion --
7 A. Uh-huh, yes.
8 Q. -- then the holding period begins to run
9 as of that date?
10 A. At that time, yes.
11 Q. Okay. And in the second area that he's
12 got questions about relates to the affiliate
13 status of Mr. Gasich. Do you see that?
14 A. Yes.
15 Q. And he says "This one is easier. The
16 question is whether you considered the affiliate
17 status of Robert Gasich. I apologize if this was
18 covered in your opinion."
19 And you respond to these two inquiries
20 on the same day. And your response is that email
21 that's right above, correct?
22 A. Yes.
23 Q. And you write "Michael - thank you
24 for your call today. In accordance with our

Page 248

1 discussion..."
2 Did you have a telephone discussion with
3 Mr. Cruz at some point in between when he sent you
4 this email and when you responded?
5 A. I don't recall, but it appears so, yes.
6 Q. Okay. And you don't recall the context of
7 that -- or what was discussed during that
8 conversation?
9 A. No, I don't recall the conversation.
10 Q. Or who else was present?
11 A. No, uh-uh.
12 Q. Or participated?
13 "...in accordance with our discussion,
14 please be advised that Robert Gasich has not been
15 during the past twelve months nor currently is an
16 affiliate of Zenergy or Paradigm." Do you see
17 that?
18 A. Yes.
19 Q. All right. Now, I think you referred to
20 this email earlier in your testimony, correct?
21 A. Yes.
22 Q. And this was the email that you referenced
23 and you said you got an inquiry from a broker
24 about its affiliate status, Mr. Gasich?

Page 249

1 A. Right.
2 Q. So in response to -- after receiving
3 Mr. Cruz's email questioning Mr. Gasich --
4 whether -- strike that.
5 In response to Mr. Cruz's email to you
6 inquiring about whether he considered Mr. Gasich's
7 affiliate status, did you undertake any further
8 inquiry to determine whether or not Mr. Gasich was
9 an affiliate?
10 A. No. I had done that prior to the opinion,
11 and that was that Mr. Gasich was not an affiliate.
12 Q. Okay. And then the second part of your
13 response is "And, as confirmation, the verbal
14 debt agreement is supported by a convertible note
15 evidencing the debt." Do you see that?
16 A. Yes, I see that. And this was part of
17 certainly my discussions with counsel. And I
18 don't know why I wrote that. It was an erroneous
19 statement. There was no note. And I didn't
20 reflect a note in any of my opinions.
21 And I was I know at the time working on
22 a number of Rule 144 opinions, and I might have
23 gotten this confused with another company. But
24 that was a false statement. It was not an

Page 250

1 accurate statement.
2 Q. And so I guess is your explanation that
3 you referenced the existence of a convertible note
4 evidencing the debt in your email to Mr. Cruz, but
5 that was just a complete mistake?
6 A. I believe so, yes, because I did not
7 use or rely on a note. I didn't draft a note. I
8 provided a template for a note.
9 And how this note is attached to this I
10 don't know, because I did not use a note. I
11 didn't even know a note existed.
12 Q. So is it your testimony that it's just
13 merely a coincidence that you made a mistake
14 by referring to a convertible note evidencing
15 the debt, and the fact that there really was a
16 convertible note evidencing the debt?
17 A. But I didn't use this note. And I
18 didn't -- I don't know why I told him this because
19 I wasn't relying on a note. I didn't supply him
20 with a note that I recall. And why this note is
21 attached to this email...
22 Q. So is it just a coincidence that your
23 mistake turned out to be true?
24 A. Well, I had no role in this note, and I

Page 251

1 didn't rely on this note as far as my Rule 144
2 opinions.
3 Q. Well, you will agree with me that it
4 does appear there was a convertible note that was
5 prepared?
6 A. Yes. Yes.
7 Q. All right. And you will agree with me
8 that your testimony is that you mistakenly
9 referred in your email to a convertible note
10 as having been in existence evidencing the debt?
11 A. That is true. I did not --
12 Q. The two are just -- it's coincidental,
13 the fact that you made a mistake of referring to
14 the convertible debt or the convertible note and
15 the fact that there was, in fact, a convertible
16 note?
17 A. It is a coincidence, because I did not use
18 a note. I didn't rely on a note. None of my
19 documents regarding the debt refer to a note.
20 And, again, I did receive a note; I don't
21 know from whom. I don't know why I would have
22 sent this together with the opinion because it
23 was not part of the documents that I reviewed. It
24 was not part of the documents that I relied on in

Page 252

1 my opinion.
2 MR. HAYES: If you could mark this as
3 Plaintiff's Exhibit 47.
4 (Plaintiff's Deposition Exhibit
5 No. 47 marked for
6 identification.)
7 BY MR. HAYES:
8 Q. Ms. Dalmy, just a few questions about this
9 document PX47, which is a series of emails between
10 you and Mr. Gasich dated July 20, 2009. Do you
11 see that?
12 A. Uh-huh.
13 Q. And, again, just yes?
14 A. Yes. Sorry.
15 Q. The email from you to Mr. Gasich with
16 the subject Paradigm Tactical, you say "Bob -
17 responding to FINRA this morning regarding the
18 name change."
19 Is it fair to say as of July 20, 2009,
20 you were still representing Paradigm, at least
21 in connection with its name change?
22 A. Just in connection with its name change,
23 yes.
24 Q. Is there -- did anybody give you any

Page 253

1 explanation as to why they wanted you to assist
2 with the providing legal services in connection
3 with the name change, but not other stuff?
4 A. No. They -- I had agreed to do the name
5 change for them. I had started the name change,
6 and then that's when I was terminated.
7 Again, I don't recall the actual date,
8 but I was terminated very shortly after the
9 transaction was finalized.
10 Q. Sometime by mid June?
11 A. I would say around mid June, yes.
12 Q. It says "They," they, FINRA, "stated that
13 the company information was not 'complete.' This
14 is the information I did not provide because I did
15 not think the company had such information. Could
16 you please provide such information for the
17 company or confirm:"
18 And then the three things you mention
19 are a fax number, an email address and a website
20 address. Do you see that?
21 A. Yes.
22 Q. And so as of July 20, 2009, you didn't
23 know whether Paradigm Tactical had a fax number,
24 correct?

Page 254

1 A. Do you mean Zenergy?
2 Q. Yes, Zenergy.
3 A. Uh-huh.
4 Q. Which Zenergy was the name of the
5 surviving company?
6 A. Right. Right.
7 Q. Actually, it's still called Paradigm at
8 this point, correct?
9 A. Okay, so Zenergy. It was new management
10 though, so for Zenergy -- no, I wasn't really
11 counsel to the company so.
12 Q. But the name of the company at this point
13 in time, the surviving --
14 A. Is still Paradigm. We were in the process
15 of changing it.
16 Q. Okay. So you didn't know as of July 20,
17 2009, whether Paradigm had a fax number?
18 A. No.
19 Q. You didn't know whether they had an
20 email address?
21 A. No. I needed to confirm all of that.
22 Q. You didn't know whether they had a website
23 address?
24 A. No -- well, I mean, I knew from the prior

Page 255

1 emails and research, but I didn't know if they
2 had changed that. I needed to confirm that
3 information.
4 Q. Couldn't you have just looked up the
5 web address before you responded to FINRA?
6 A. Well, I wanted to confirm it. So this
7 is -- it looks -- I didn't know if they had
8 changed their --
9 Q. It looks like you provided this
10 information to FINRA without this information,
11 and then they came back and said we need this
12 information.
13 And you're saying to Bob Gasich the reason
14 I didn't provide it to FINRA is because I did not
15 think the company had such information, correct?
16 A. Or such current information.
17 Q. Well, that's not what you said.
18 A. Well, I mean, I was shooting off an email.
19 So surely I knew they had a fax number, they had
20 an email address. I had been -- I didn't know
21 specifically the email address. And I knew they
22 had a website. I wanted to confirm the current
23 information.
24 Q. Well, if that's the case, wouldn't you

Page 256

1 have -- wouldn't you have tried to confirm that
2 information with Mr. Gasich before you responded
3 to FINRA?
4 A. I don't know the timing of this or...
5 Q. Well, I'm using your words.
6 A. Uh-huh.
7 Q. And I'm trying to understand what you
8 wrote.
9 A. I don't --
10 Q. You wrote "Bob, responding to FINRA..."
11 A. Uh-huh.
12 Q. That implies to me that FINRA contacted
13 you and your -- made an inquiry of you, correct?
14 A. I believe they had a litany of questions,
15 and there were certain questions that needed to
16 be responded to. And this was probably some of
17 the questions.
18 Q. And then you say "They stated," and I
19 assume when you say they stated --
20 A. FINRA.
21 Q. -- you're talking about FINRA?
22 A. Uh-huh.
23 Q. FINRA "stated that company
24 information" -- and I assume when you write

Page 257

1 company information, you're referring to
2 Paradigm?
3 A. Well, the new Zenergy, uh-huh.
4 Q. "They stated that company information
5 was not 'complete,'" and you put quotes around
6 that. So I assume from that that that was
7 FINRA's word?
8 A. Yes.
9 Q. Okay. "This is the information I did not
10 provide because I did not think the company had
11 such information."
12 So what -- the way I read that is that
13 you provided some information to FINRA, but not
14 the information contained in your email?
15 A. Yes.
16 Q. And the reason you didn't provide that
17 information to FINRA originally was because you
18 did not think that the company had that
19 information?
20 A. Well, I think that's an awkward way
21 of writing my email, but of course the company
22 had a fax number. I didn't know their email
23 address. And I knew their website address. So
24 I wanted to just confirm their current

Page 258

1 information.
2 Q. Well, you said "Could you please provide
3 such information for the company or confirm."
4 So that to me means -- the way I read
5 that is could you confirm -- could you either
6 provide this information because I don't have it
7 or confirm that it doesn't exist.
8 A. No or confirm --
9 MR. ROSENBURG: I don't think there's a
10 question pending.
11 THE WITNESS: Oh.
12 BY MR. HAYES:
13 Q. Is that -- isn't that a fair
14 interpretation of what you wrote?
15 MR. ROSENBURG: Object to the form and
16 foundation.
17 A. I was just trying to confirm the
18 information to provide to FINRA.
19 MR. HAYES: Okay. Mark this as
20 Plaintiff's Exhibit 48.
21 (Plaintiff's Deposition Exhibit
22 No. 48 marked for
23 identification.)
24 BY MR. HAYES:

Page 259

1 Q. Ms. Dalmy, Plaintiff's Exhibit 48, do you
2 recognize this document?
3 A. Yes.
4 Q. Okay. Now, the document has -- what is
5 this document, Plaintiff's Exhibit 48?
6 A. It's my opinion.
7 Q. It's an opinion letter that you wrote
8 dated August 26, 2009, correct?
9 A. Yes.
10 Q. And it's in relation to the assignment of
11 shares to -- do you know what? Why don't you tell
12 me.
13 What does this opinion letter dated
14 August 26, 2009, relate to?
15 A. These were shares that were, I believe,
16 previously issued to Mr. Wilding, who then
17 advised me that he was transferring some of
18 these shares to his friend.
19 Q. And who was his friend?
20 A. I don't recall the individual's name, but
21 I know he wanted them in his company's name.
22 Q. And what was the company's name? I'm
23 sorry.
24 A. Investing in Stock Market, Inc.

Page 260

1 Q. And was that -- the individual's name, was
2 that Dale Baeten?
3 A. I believe so.
4 Q. And did you provide this letter directly
5 to Wilson Davis & Company and Pacific Stock
6 Transfer Company, as indicated on the first
7 page of the exhibit?
8 A. I don't recall.
9 Q. Okay. If you can see up at the upper
10 right-hand corner of this document, there is
11 kind of a stamp up there, Zenergy International,
12 Inc., SEC File No. C-07707 WDCO 00069," and then
13 that continues through WDCO 00089. Do you see
14 that?
15 A. Yes.
16 Q. Okay. Oh, I'm sorry, it actually finishes
17 with 90.
18 W -- so the last page is WDCO 00090; is
19 that correct?
20 A. Yes.
21 Q. All right. The first five pages of
22 the exhibit is your Rule 144 opinion letter,
23 correct?
24 A. That's correct.

Page 261

1 Q. And on page 5 that's your signature,
2 correct?
3 A. Yes.
4 Q. And then the next several pages of this
5 document -- well, let's start with the next page.
6 Is the Zenergy International, Inc.,
7 convertible promissory note dated April 7, 2008.
8 Do you see that?
9 A. Yes, I do.
10 Q. Okay. Is it your testimony that in
11 connection with the provision of this opinion
12 letter to Wilson Davis & Company and Pacific Stock
13 Transfer Company, you did not attach this
14 convertible note?
15 A. No, I don't believe so. Not at all.
16 Q. Okay. Do you know how it -- the Bates
17 label up at the top, WDCO 00078, indicates that
18 it came from the files of Wilson Davis & Company.
19 Do you know how this convertible note
20 might have gotten in their files?
21 A. No, I don't.
22 Q. Okay. And so the next document is a
23 Paradigm Tactical Products consent resolution
24 of the board of directors of the company. Do you

Page 262

1 see that?
2 A. Uh-huh.
3 Q. Is that a yes?
4 A. Yes.
5 Q. And is this a document that you prepared?
6 A. It's similar to a document that I
7 prepared.
8 Q. Okay. And this is a document that
9 says, if you look at the "Approval and
10 Ratification of the Share Exchange Agreement,"
11 it says paragraph 1, "The execution and
12 consummation of the Share Exchange Agreement among
13 the Company, Zenergy and Zenergy Shareholders
14 be and hereby is approved and ratified in all
15 respects." Do you see that?
16 A. Yes, I do.
17 Q. And paragraph 2, "The Company be and
18 hereby is authorized to assume the Debt and any
19 other liabilities as set forth in the terms and
20 provisions of the Share Exchange Agreement, and
21 is further authorized to comply with the terms and
22 provisions of the Convertible Note." Do you see
23 that?
24 A. This is not what I drafted.

Page 263

1 Q. Okay. And this document if you go on the
2 next page it's dated June 8, 2009.
3 A. Uh-huh.
4 Q. Is that a yes?
5 A. Yes.
6 Q. And that's Mr. Cammarata that signed that?
7 A. Yes.
8 Q. Okay. And, again, is it your testimony
9 that this document was not appended or included
10 as an attachment to your Rule 144 opinion letter
11 that was provided to Wilson Davis & Company and
12 Pacific Stock Transfer Company?
13 A. I don't believe so. And it's not the
14 board resolutions that I had drafted, because
15 I had no inclusion of a convertible note in the
16 whereas clause or in the board resolutions.
17 Q. All right. And the next document is a
18 "Zenergy International, Inc., Consent Resolutions
19 of the Board of Directors of the Company." Do you
20 see that?
21 A. Yes.
22 Q. And it says in the whereas -- in the
23 second whereas clause, "Whereas, the Board of
24 Directors of the Company acknowledges that a debt

Page 264

1 in the amount of $30,000 was incurred due and
2 owing to Robert Gasich ('Gasich') as of April 7,
3 2008 (the 'Debt'), which Debt has been evidenced
4 by that certain convertible promissory note dated
5 April 7, 2008, and the principal amount of
6 $30,000..." Do you see that?
7 A. Yes, I do, but, again, the resolutions
8 that I drafted did not contain any reference to
9 a convertible promissory note.
10 Q. Okay. So is it your testimony that you
11 did not prepare this document, this consent
12 resolution, which is identified by Bates label
13 in the upper right-hand corner WDC085 and 86?
14 A. I prepared something very similar, but
15 it referenced the debt, the verbal agreement.
16 That was the language that I used throughout as
17 far as board resolutions, the share exchange
18 agreement, the opinion.
19 Q. And so you don't -- your testimony is you
20 did not prepare this specific document?
21 A. I prepared something similar to that,
22 but I didn't prepare a document that included a
23 convertible promissory note.
24 Q. All right. And so is it your testimony

Page 265
1 that when you provided your Rule 144 opinion
2 letter dated August 26, 2009, to Wilson Davis &
3 Company and Pacific Stock Transfer Company, it
4 did not include this consent resolution?
5 A. No, I don't believe so.
6 Q. Okay. And then the next document is
7 assignment of debt. Robert Gasich is assignor
8 to Skyline Capital. Do you see that?
9 A. Yes.
10 Q. And the next document is the notice of
11 conversion. Do you see that?
12 A. Yes.
13 Q. And then there's a consulting services
14 agreement, the last two pages of this document.
15 Do you see that?
16 A. Yes.
17 Q. Were you aware that Mr. Baeten and
18 Mr. Wilding had entered into a consulting services
19 agreement?
20 A. No, not at the time. I was told this was
21 a gift of shares. And that's why in connection
22 with the opinion I listed the acknowledgment of
23 gift of shares as an item that I relied on.
24 Scott Wilding told me that he merely was

Page 266
1 giving some shares to his friend.
2 Q. Okay. So is it your testimony that you
3 were not aware of this document, this consulting
4 services agreement, between Scott Wilding and
5 Mr. Dale Baeten as of October 6, 2009?
6 A. Yes, I was not aware of this.
7 Q. If you were not aware of it then, you
8 did not include it as an attachment with your
9 August 26, 2009, opinion letter to Wilson
10 Davis & Company and Pacific Stock Transfer, Inc.;
11 is that fair?
12 A. I certainly don't recall providing that.
13 Q. If you could take a look at your opinion
14 letter again, page 3 of your opinion letter,
15 WDCO 00071, paragraph 7 there, number 7, says
16 that "In connection with this opinion, I have
17 examined the following:"
18 Number 7 is "The Acknowledgment of Gift
19 of Shares dated August 7, 2009 signed by a
20 representative of Skyline." Do you see that?
21 A. Uh-huh. Yes.
22 Q. Okay. Did you actually receive an
23 acknowledgment of gift of shares document?
24 A. I drafted one and sent one to Mr. Wilding.

Page 267
1 I don't recall if I received one back signed.
2 Q. Well, it says that you have examined the
3 acknowledgment --
4 A. Yes.
5 Q. -- of gift of shares dated August 7, 2009,
6 signed by a representative of Skyline.
7 So does that refresh your recollection
8 that you actually saw a signed one?
9 A. I would think so then, yes, if I -- yes.
10 Q. Do you have a copy of this acknowledgment
11 of gift of shares document?
12 A. No, I don't.
13 Q. Have you ever seen one since --
14 A. Well, I believe it was in that box of
15 documentation.
16 Q. Have you ever -- other than --
17 A. And I don't recall if it was signed or
18 not. I just don't recall that.
19 Q. Okay. Other than in that box of
20 documentation that was in your house and
21 destroyed by the flood, have you seen any other
22 copy of an email of the acknowledgment of gift of
23 shares?
24 A. No, just the one that I drafted and I sent

Page 268
1 to Mr. Wilding.
2 Q. And did you draft that on your computer?
3 A. Yes. I would have, yes.
4 Q. Okay. So if you did, it should be on your
5 computer, correct?
6 A. Yes.
7 Q. And have you produced it as part of the
8 litigation in this case?
9 A. Yes, I believe so. I've produced
10 everything.
11 Q. Okay. Could you -- I haven't seen it.
12 And so if you could provide me with a copy of it,
13 I'd appreciate it.
14 A. Okay. I believe that that was done by
15 Mike MacPhail.
16 Q. Okay. Again, I don't recall seeing it.
17 A. Okay.
18 Q. But it's possible maybe I missed it, so
19 I'll look again, and if you could look again.
20 A. Uh-huh.
21 Q. And I wonder at this point, you know,
22 if it's -- we can't get it off your computer
23 anymore because your computer doesn't exist,
24 correct?

Page 269

1 MR. ROSENBURG: Well, objection, that
2 mischaracterizes her testimony.
3 BY MR. HAYES:
4 Q. Or you believe your computer doesn't
5 exist?
6 MR. ROSENBURG: That mischaracterizes it
7 too.
8 BY MR. HAYES:
9 Q. Well, you believe your computer was
10 destroyed?
11 MR. ROSENBURG: I think that
12 mischaracterizes it.
13 MR. HAYES: Let the witness answer.
14 MR. ROSENBURG: Well, I can make my
15 objection.
16 A. Because he was able to transfer over
17 certain -- actually, much of my hard drive as far
18 as my computer documents.
19 BY MR. HAYES:
20 Q. Okay. So you --
21 A. So that's where, yeah, a lot of this --
22 Q. You believe a copy of your hard drive
23 actually exists today?
24 A. Well, I have this -- I believe I have

Page 270

1 this on my hard drive of my new computer when he
2 transferred -- was able to after my computer
3 crashed transfer things over.
4 Q. All right.
5 A. He wasn't able to get everything, but
6 I believe that this was one.
7 Q. All right. So as part of Mr. Lamb's
8 efforts to retrieve information from your old
9 computer, he transferred some information to your
10 new computer?
11 A. Yes. He was able to retrieve
12 substantially a large portion of the documents
13 on hard drive.
14 Q. All right. I'm going to ask you to
15 preserve that computer. Preserve the document.
16 I don't want to -- I prefer you not open the
17 document or do anything to the document that
18 would affect the metadata of the document.
19 A. Uh-huh.
20 Q. And I would like a copy of your current
21 hard drive to your computer so that I can
22 investigate what's on there, what's not on there.
23 A. Okay.
24 Q. And when these documents, if they exist,

Page 271

1 and whether they're created.
2 A. Okay.
3 MR. ROSENBURG: Obviously she's not
4 consenting to produce it. You could make a
5 request and all.
6 MR. HAYES: Right. I'm putting her on
7 notice that I want it.
8 MR. ROSENBURG: Sure.
9 MR. HAYES: And if something happens
10 to it that affects it, well, then we may have an
11 issue. And I'm asking for a forensically sound
12 image of what's currently on that hard drive.
13 BY MR. HAYES:
14 Q. Did you ever speak with Mr. Dale Baeten
15 in connection with the August 2009 opinion letter
16 you wrote for him?
17 A. Yes, I spoke with him.
18 Q. And did you actually meet with him?
19 A. No. Uh-uh.
20 Q. All right. How many times did you speak
21 with him?
22 A. Probably three or four.
23 Q. And what did you guys discuss?
24 A. The general opinion and the reason why he

Page 272

1 was receiving the shares.
2 Q. And what did he say?
3 A. I believe he also told me that they were
4 just being gifted to him by Scott.
5 Q. Do you believe that or -- I mean do you
6 remember that or --
7 A. No, I don't recall specifically him
8 telling me that.
9 I recall Scott specifically telling me
10 that.
11 Q. But you don't recall whether Mr. Baeten
12 actually specifically told you that?
13 A. No, I don't recall that.
14 MR. HAYES: Would you mark this as
15 Plaintiff's Exhibit 49.
16 (Plaintiff's Deposition Exhibit
17 No. 49 marked for
18 identification.)
19 BY MR. HAYES:
20 Q. Ms. Dalmy, if you could take a look at
21 Plaintiff's Exhibit 49, which is, again, a series
22 of emails this time between you and Mr. Cammarata
23 in December of 2009.
24 A. Uh-huh.

Page 273
1 Q. Do you remember these emails?
2 A. Yes, I do. Uh-huh.
3 Q. Okay. And from my review of the emails,
4 it looks like Mr. Cammarata is asking you to
5 prepare a Rule 144 opinion letter with respect
6 to the shares that he obtained as a result of the
7 merger.
8 A. Yes.
9 Q. Okay. And in your email in that first
10 page dated December 15, 2009, to Mr. Cammarata
11 states that "Vinnie - right now I am not providing
12 ANY Rule 144 opinion letters. I am sorry - you
13 have no idea what is going on in the industry
14 right now and over the past two weeks I have made
15 this decision." Do you see that?
16 A. Yes.
17 Q. What were you referring to?
18 A. Just the difficulty of debt conversions,
19 and the fact that I had decided I was not going
20 to write anymore opinions regarding debt
21 conversions.
22 Q. And what was the problem in the industry
23 regarding debt conversions?
24 A. Just the general tenor and the knowledge

Page 274
1 of the positions of the SEC and FINRA on debt
2 conversion.
3 Q. And what was -- what were those -- what
4 were those SEC opinions and FINRA about?
5 A. Well, just talking amongst people and
6 understanding that the SEC does not like debt
7 conversion opinions.
8 Q. Okay. And how did you learn that?
9 A. Speaking with other attorneys, with
10 brokers, transfer agents.
11 Q. And that was something that had -- that
12 was news that -- or information that you had
13 not known prior to, say, two weeks before writing
14 this email?
15 A. Oh, no. I was aware of all of this.
16 Q. Okay. So why is it that you wrote these
17 opinion letters for these other individuals, but
18 now you won't write one for Mr. Cammarata?
19 A. I don't recall. I just recall that I
20 was dragging my feet on this, and I wasn't going
21 to just jump on it.
22 I wanted to make sure that there was no
23 concern regarding affiliate status, that we had
24 a signed copy of his resignation, that

Page 275
1 3 full months had passed.
2 Q. And so is it fair to say that when you
3 told Mr. Cammarata that you weren't going to
4 write an opinion letter for him, he was upset?
5 A. Yes, he was.
6 Q. And that's kind of reflected in his
7 response emails, correct?
8 A. Yes. Yes.
9 Q. And then ultimately you respond to
10 Mr. Cammarata on December 17, 2009, and that's
11 the email at the top of the page. Do you see
12 that?
13 A. Uh-huh.
14 Q. And you say "Vinnie - you have NO idea
15 regarding the state of affairs in the industry
16 involving FINRA and SEC. I am not going to write
17 an opinion until I am satisfied that there are
18 absolutely no issues regarding this company."
19 And this company that you're referring to
20 was the surviving company now known as Zenergy,
21 correct?
22 A. That's correct.
23 Q. All right. And you say "I am not going to
24 risk my license. I am reviewing everything. And

Page 276
1 no - it won't take 5 minutes. It will take me
2 an hour to prepare and then be bombarded with
3 questions and requests for documentation from
4 brokers and lawyers from brokerage firms,
5 et cetera. I need to make sure that all is in
6 order - and I am not sure it is."
7 What were you referring to there when you
8 said "I need to make sure that all is in order -
9 and I am not sure it is"?
10 A. I don't recall. I don't recall. I just
11 was going to go back. I mean, this was 3 months
12 later from when I had written the last opinion,
13 I believe, in September.
14 And I just wanted to make sure that this
15 company was -- everything was in order. I hadn't
16 been counsel to the company.
17 Q. Okay. And that's -- I mean, it looks
18 like to me when you made that statement I need to
19 make sure that all is in order and I'm not sure it
20 is, it seems to me that that's an allusion to your
21 earlier statement that I'm not writing an opinion
22 until I am satisfied that there are absolutely no
23 issues regarding this company.
24 A. Right. Yes.

Page 277

1 Q. Okay. And it says -- and later you say
2 I'm not sure it is. Were you -- were there issues
3 about the company that --
4 A. Oh, no, no. Just meaning that I hadn't
5 had the time to, you know, ascertain -- it had
6 been awhile since I had worked with -- looking at
7 this company and worked with it, so I was -- I
8 needed the time to check that.
9 Q. Okay. And so you weren't aware at the
10 time you were writing these emails to
11 Mr. Cammarata of any specific issues pertaining
12 to the company that worried you?
13 A. No. Not in general, no.
14 Q. And ultimately you did write an opinion
15 letter for Mr. Cammarata, correct?
16 A. Yes.
17 Q. And that was dated December 28, 2009?
18 A. I guess so. I don't...
19 Q. I'm going to show this to you. I didn't
20 make copies of it unless --
21 MR. HAYES: Do you know what? Why don't
22 we mark this as an exhibit.
23 Can you mark this as Exhibit, what are we
24 at, 50?

Page 278

1 MR. ROSENBURG: Yeah.
2 (Plaintiff's Deposition Exhibit
3 No. 50 marked for
4 identification.)
5 MR. HAYES: Can I see that real quick?
6 BY MR. HAYES:
7 Q. Ms. Dalmy, I'm going to hand you a
8 document. It's not stapled. We'll have it bound.
9 But it's one, two, three, four pages. It's got
10 some fax traffic along the top that says page 2
11 of 5 and then ends with page 5 of 5. I'm going to
12 ask the court reporter to hand that to you.
13 THE WITNESS: Thanks.
14 BY MR. HAYES:
15 Q. Is that a copy of the opinion letter you
16 wrote for Mr. Cammarata?
17 A. Yes.
18 Q. Okay. And that's your signature on the
19 last page?
20 A. Yes.
21 Q. All right.
22 MR. HAYES: Would you mark this as
23 Plaintiff's Exhibit 51.
24 (Plaintiff's Deposition Exhibit

Page 279

1 No. 51 marked for
2 identification.)
3 BY MR. HAYES:
4 Q. Ms. Dalmy, Plaintiff's Exhibit 51 is a
5 copy of the answer that was filed on your behalf
6 to the complaint in this litigation. Do you
7 recognize the document?
8 A. Yes.
9 Q. Did you review this document before it was
10 filed?
11 A. I'm sure I did, yes.
12 Q. And your, as a lawyer, you're under --
13 even though you don't do litigation, you
14 understand that as a defendant in a lawsuit,
15 you have an obligation to file an answer to the
16 allegations in the complaint, correct?
17 A. Yes.
18 Q. Okay. And it's your obligation to make
19 sure that you respond truthfully to those
20 allegations?
21 A. Yes.
22 Q. Okay. And so certainly at the time you
23 reviewed this document before it was filed,
24 you wanted to make sure that your answers were

Page 280

1 truthful, correct?
2 A. Yes.
3 Q. All right. You certainly wouldn't want to
4 file a document with the Court that contained --
5 A. No.
6 Q. -- false or inaccurate information?
7 A. No. To the best of my ability, no.
8 Whatever statements I reviewed would have been
9 accurate.
10 Q. And so you satisfied yourself that the
11 responses that -- to the allegations in this
12 complaint -- I'm sorry.
13 You satisfied yourself that the responses
14 you gave to the allegations in the complaint
15 contained in this answer were accurate, correct?
16 A. Yes.
17 Q. All right. As you sit here today, do
18 you have any reason to believe that any of the
19 responses in your answer are inaccurate?
20 A. Well, no. Any responses that I stated
21 were to the best of my ability accurate.
22 Q. Okay. And you still believe them to be
23 accurate today?
24 A. Yes, I do. Yes.

Page 281

1 Q. You have no reason to believe any of the
2 responses are inaccurate?
3 A. No.
4 MR. HAYES: Okay. Could you mark this as
5 Plaintiff's Exhibit 52, please.
6 (Plaintiff's Deposition Exhibit
7 No. 52 marked for
8 identification.)
9 BY MR. HAYES:
10 Q. All right. Ms. Dalmy, Plaintiff's
11 Exhibit 52 begins with a cover letter from your
12 counsel, Mr. Rosenburg, to me dated March 28,
13 2014. Do you see that?
14 A. Yes.
15 Q. And attached are two documents. The
16 first is "Defendant's Response to Plaintiff's
17 First Set of Interrogatories." Do you see that?
18 A. Uh-huh. Yes.
19 Q. And these are -- when it says defendant's
20 response, the defendant referred to is you,
21 correct?
22 A. Yes.
23 Q. And these are your responses to specific
24 written questions or interrogatories provided to

Page 282

1 you or asked of you by the plaintiff, SEC, in this
2 case, correct?
3 A. Yes.
4 Q. All right. And, again, the same questions
5 with respect to your answers here.
6 You understood that you, in providing
7 these answers, had to provide accurate and
8 truthful information, correct?
9 A. Yes.
10 Q. Okay. And that the answers couldn't be
11 misleading, right?
12 A. I'm sorry, what?
13 Q. And that your answers could not be
14 misleading?
15 A. Right. Could not be misleading, no.
16 Q. Did you review these answers before they
17 were provided to the SEC on your behalf?
18 A. I don't recall specific -- I -- well,
19 yes, I did.
20 Q. Okay. That's your --
21 A. Yes.
22 Q. What you're looking at is the --
23 contained kind of at the end of this particular
24 document, but the middle of the exhibit, is a

Page 283

1 document called "Certification," correct?
2 A. Yes.
3 Q. And it states that under penalties of
4 perjury -- I'm sorry.
5 "Under penalties as provided by law,
6 the undersigned, Diane D. Dalmy, certifies that
7 the statements set forth in this instrument" --
8 And that instrument is your answer to
9 interrogatories, correct?
10 A. Yes.
11 Q. -- "are true and correct, except as to
12 matters therein stated to be on information and
13 belief and as to such matters the undersigned
14 certifies as aforesaid, that she verily believes
15 the same to be true," correct?
16 A. Yes.
17 Q. And that's your signature?
18 A. Yes.
19 Q. Do you have any reason to believe that
20 any of the answers that you provided in this
21 interrogatory response are inaccurate or
22 misleading?
23 A. Well, no, based on my certification,
24 but I'm not -- I'd have to review this. I don't

Page 284

1 recall the specific document.
2 Q. But nothing has happened --
3 A. No.
4 Q. You're not aware of anything that would
5 call into question your answers to this -- that
6 you provided in this document?
7 A. No. Uh-uh.
8 Q. All right. And in then the next document
9 is Diane Dalmy's response to plaintiff's first
10 request for production to defendant Diane Dalmy.
11 Do you see that?
12 A. Yes.
13 Q. And this was your written response to the
14 SEC's request for you to provide written documents
15 in the case or, I'm sorry, for you to provide --
16 bad question. Strike that.
17 This document was your written response to
18 the SEC's request for you produce documents to the
19 SEC, correct?
20 A. Yes.
21 Q. All right. Did you review this document
22 before it was submitted to the SEC?
23 A. Yes, I did, but I was leaving a lot
24 of what was said in there up to my attorney. I

Page 285

1 didn't understand everything that was in here.
2 Q. Okay. But to the extent you had any
3 questions about what was in this document that
4 concerned you, you certainly could have asked
5 your attorney, correct?
6 A. Yes.
7 Q. All right. And to the extent that you
8 saw any information that was inaccurate or
9 misleading in this document, you corrected that,
10 correct?
11 A. I would have, but I don't believe I had
12 anything.
13 Q. Okay. So certainly with respect, as you
14 sit here today, you believed that the responses
15 are accurate and complete?
16 A. Yes.
17 Q. All right. You don't believe anything is
18 inaccurate or misleading?
19 A. No.
20 MR. HAYES: Okay. Could we just take a
21 real short break.
22 THE VIDEOGRAPHER: Off the record at
23 5:09 p.m.
24 (Recess taken from 5:09 p.m. to

Page 286

1 5:11 p.m.)
2 THE VIDEOGRAPHER: Back on the record at
3 5:11 p.m.
4 BY MR. HAYES:
5 Q. All right. Ms. Dalmy, when's the last
6 time you spoke or communicated with Mr. Wilding?
7 A. Probably 2009 at the time that this
8 transfer of shares occurred.
9 Q. All right. You haven't spoken or
10 communicated with him in any way since -- in
11 the last 6 months?
12 A. Oh, no. No.
13 Q. What about with respect to Mr. Gasich?
14 A. No, not at all.
15 Q. Not -- when is the last time you think
16 you've spoken with him or communicated?
17 A. Probably same time frame.
18 Q. All right. What about with respect to
19 Mr. Luiten, when's the last time you communicated
20 with him?
21 A. Definitely within the same time frame.
22 Q. What about with respect to Mr. Cammarata?
23 A. I haven't spoken with him in well over
24 6 months.

Page 287

1 Q. Okay. In the last 6 months, other than
2 your attorneys, have you spoken to anyone else
3 about this litigation?
4 A. Not at all.
5 Q. Okay. What did you do to prepare for your
6 deposition today?
7 A. I reviewed the complaint. I reviewed
8 my prior testimony. I reviewed the packet of
9 documents that Mike MacPhail made copies of that
10 I had submitted. I reviewed -- well, I attempted
11 to review the documents on the SEC disk. And then
12 when Mike was able to forward some of those to me,
13 I reviewed those.
14 Q. Did you meet with any of your attorneys?
15 A. Yesterday, yes.
16 Q. Who did you meet with?
17 A. I met with Mike MacPhail and then we
18 videoconferenced in Howard.
19 Q. Okay. And how long did that meeting take
20 place?
21 A. Two and a half hours --
22 Q. All right.
23 A. -- at the most.
24 Q. What's the nature of your relationship or

Page 288

1 what was the nature of your relationship back in
2 2009 with Mr. Wilding?
3 A. I didn't care for Mr. Wilding. He was a
4 business contact.
5 Q. Did you have any type of personal
6 relationship with Mr. Wilding?
7 A. Oh, no. No.
8 Q. And you never met Mr. Wilding?
9 A. I've never met him. I mean, he was odd
10 in some of his, as I recall, emails, but I've
11 never, ever.
12 Q. Mr. Helms is going to get a copy of an
13 October opinion letter that you prepared or I
14 believe you prepared that I forgot to ask you
15 about. Let me see if I --
16 MR. HAYES: Mark this Exhibit 53, please.
17 (Plaintiff's Deposition Exhibit
18 No. 53 marked for
19 identification.)
20 BY MR. HAYES:
21 Q. Ms. Dalmy, is Exhibit 53 an opinion letter
22 that you prepared dated October 20, 2009?
23 A. Yes, it appears so. Yes.
24 Q. And does this opinion letter relate to

Page 289

1 shares of stock that relate to Charles Bennett?
2 A. Bennett, yes.
3 Q. Did you communicate with Mr. Bennett in
4 connection with this letter?
5 A. Yes, I did.
6 Q. Did you ever meet with him?
7 A. No, I did not.
8 Q. And how many times did you talk with him
9 on the phone?
10 A. Three or four.
11 Q. Okay. And what was the substance of those
12 conversations?
13 A. That he paid consideration for the
14 shares, and that was the nature of our
15 conversation, and the fact that he needed an
16 opinion letter.
17 Q. All right. Ms. Dalmy, earlier at the
18 very beginning of this deposition, you said that
19 you wanted to supplement some of the answers that
20 you previously gave during your investigative
21 testimony.
22 A. Uh-huh.
23 Q. Do you remember that?
24 A. Yes.

Page 290

1 Q. Do you feel that you've done that today?
2 A. Yes.
3 Q. Is there any answers that you previously
4 gave in your investigative testimony that you
5 don't believe have been adequately supplemented
6 by your testimony today?
7 A. No. I just wanted to let you know that
8 the sale or the sale of my shares of stock, that
9 I just did that arbitrarily on any given day. It
10 was late in August. It could have easily been
11 September. It could have been a year from now or
12 from then.
13 I was not tracking any press releases. I
14 had no idea about any share price on the market.
15 And I sold a number of shares that were
16 commensurate with the legal fees I felt I
17 had earned.
18 MR. HAYES: Okay. I don't have any
19 further questions.
20 MR. ROSENBURG: I'll be very quick.
21 EXAMINATION
22 BY MR. ROSENBURG:
23 Q. Ms. Dalmy, earlier today you testified
24 about efforts you made to determine whether or

Page 291

1 not Paradigm was a shell. Do you recall that
2 testimony?
3 A. Yes.
4 Q. And you talked about reviewing press
5 releases, right?
6 A. Yes.
7 Q. As far as you know, do those press
8 releases exist anywhere today?
9 A. Some of those exist. I don't believe all
10 of them do but...
11 Q. Where do some of those exist?
12 A. On the Internet.
13 Q. And how would one find them on the
14 Internet?
15 A. I would just put in Paradigm Tactical
16 Products as far as the name of the company.
17 That's what I did when I conducted my search.
18 MR. ROSENBURG: Okay. That's all I have.
19 MR. HAYES: Nothing further.
20 THE VIDEOGRAPHER: Off the record at
21 5:18 p.m.
22 (Whereupon proceedings were
23 adjourned at 5:18 p.m.)
24

Page 292

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION
4
5 SECURITIES AND EXCHANGE)
COMMISSION,)
6 Plaintiff,)
vs.) No. 13 CV 05511
7 ZENERGY INTERNATIONAL, INC.,)
et al.)
8
9 This is to certify that I have read
10 the transcript of my deposition taken in the
11 above-entitled cause by Doralyn Gordon, Certified
12 Shorthand Reporter, on June 10, 2014, and that the
13 foregoing transcript accurately states the
14 questions asked and the answers given by me as
15 they now appear.
16
17 ______________________
18 DIANE DISHLACOFF DALMY, ESQUIRE
19
20 Subscribed and sworn to
21 before me this ______ day
22 of__________, 2014.
23 ______________________
24 Notary Public

Page 293

1 Case Name: SEC vs. Zenergy
2 Deposition of: DIANE DISHLACOFF DALMY, ESQUIRE
3 Date Taken: June 10, 2014
4
5 Page Line Change:
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21 ___ ___ ______________
22 Date: ______________
23 Signature: ______________
24

Page 294

1 Case Name: SEC vs. Zenergy
2 Deposition of: DIANE DISHLACOFF DALMY, ESQUIRE
3 Date Taken: June 10, 2014
4
5 Page Line Change:
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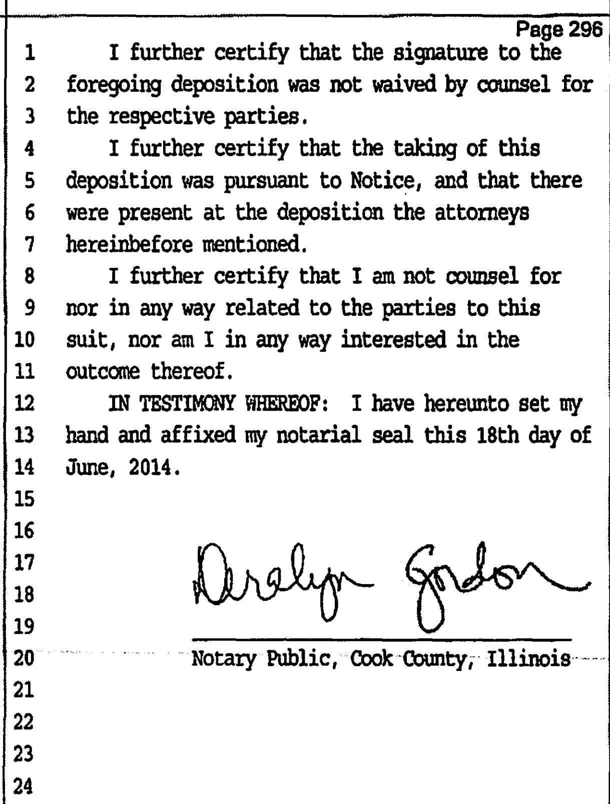
21 ___ ___ ______________
22
23 Date: ______________
24 Signature: ______________

Page 295

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4 I, Deralyn Gordon, a notary public within and
5 for the County of Cook and State of Illinois, do
6 hereby certify that heretofore, to-wit, on the
7 10th of June, 2014, personally appeared before me
8 at 175 West Jackson Boulevard, Suite 900, Chicago,
9 Illinois, DIANE DISHLACOFF DALMY, Esquire, in
10 a cause now pending and undetermined in the
11 United States District Court Northern District of
12 Illinois Eastern Division, wherein Securities and
13 Exchange Commission is the Plaintiff, and Zenergy
14 International, Inc., et al., are the Defendants.
15 I further certify that the said witness was
16 first duly sworn to testify the truth, the whole
17 truth and nothing but the truth in the cause
18 aforesaid; that the testimony then given by said
19 witness was reported stenographically by me in the
20 presence of the said witness, and afterwards
21 reduced to typewriting by Computer-Aided
22 Transcription, and the foregoing is a true and
23 correct transcript of the testimony so given by
24 said witness as aforesaid.

Page 296

1 I further certify that the signature to the
2 foregoing deposition was not waived by counsel for
3 the respective parties.
4 I further certify that the taking of this
5 deposition was pursuant to Notice, and that there
6 were present at the deposition the attorneys
7 hereinbefore mentioned.
8 I further certify that I am not counsel for
9 nor in any way related to the parties to this
10 suit, nor am I in any way interested in the
11 outcome thereof.
12 IN TESTIMONY WHEREOF: I have hereunto set my
13 hand and affixed my notarial seal this 18th day of
14 June, 2014.
15
16
17
18
19



20 Notary Public, Cook County, Illinois
21
22
23
24

EXHIBIT 5

scott wilding

From: <[redacted]>
Date: Sunday, May 17, 2009 3:43 PM
To: [redacted]; <liquidinvestorsorg@accesspro.net>
Subject: ZEN/PDGT

Diane-

Please let me know if this is proper flow chart for debt conversion, as I have used this format in the past.

We have debt of $30,000.00 that is convertible at par value Robert Gasich (not an officer or director but 10%+ owner) – aged over 12 months. Will you please send me a copy of a standard convertible note for my review... Thanks:

I will then assign the debt to the following individuals who will elect to convert into free trading stock:

1. 49,000,000 Shares to Kymberly Nelson ($4900)

2. 49,000,000 Shares to Javorka Gasich ($4900)

3. 49,000,000 Shares to Nenad Jovanovich ($4900)

4. 49,000,000 Shares to Diana Bozovic ($4900)

5. 10 Million Shares to Downshire Capital, Inc. ($1000)

6. 4 Million Shares to Diane Dalmy ($400)

7. 37.6 Million Shares to Skyline ($3760)

8. 13 Million Shares to Vincent Camarata ($1300)

9. 13 Million Shares VLC Holdings LLC ($1300)

10. 26 Million Shares to Jon R. Latorella ($2600)

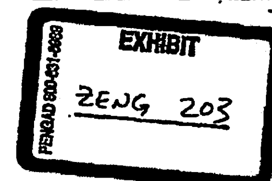
11. 400K Shares to Romero Klep ($40)

I will assign the debt using the following documents with each of the above individuals:

Notice of Conversion

The undersigned hereby irrevocably elects to convert $1000.00 into (10,000,000) ten million shares of common stock of Zenergy International, Inc. ("Company") according to conditions set forth in such common stock certificate as of the date written below.

If shares are to be issued in the name of a person or entity other than the undersigned, the undersigned will pay all transfer and other taxes and charges payable with respect thereto.



Date of Conversion: May , 2009

Applicable Conversion Price: $.0001

Shares are to be registered in the following name:

Name: Downshire Capital, Inc.

Address: 1980 Sherbrooke St., Suite 1110, H3H 1 E8, Montreal, Quebec

____

Downshire Capital, Inc.
(TAX ID)

Assignment of Debt

Robert Gasich
("Assignor")

Downshire Capital, Inc. ("Assignee")

THIS ASSIGNMENT made this ___ day of May, 2009 by and between Robert Gasich ("Assignor") and Downshire Capital, Inc., ("Assignee")
=0 A

Witnesseth, that for valuable consideration in hand of significance received "Consulting Services" by the Assignee in support of the Assignor, receipt of which hereby is acknowledged;

The Assignor hereby assigns and transfers to Downshire Capital, Inc. $1000.00 of assignable debt of Zenergy International, Inc. (successor to Paradigm Tactical Solutions, Inc.), held beneficially and of record by the Assignor.

IN WITNESS WHEREOFF, the Assignor has executed this Assignment on the day and year first above written.

This assignment is without recourse to the Assignee.

____________________	____________________
Robert Gasich	Downshire Capital, Inc.
("Assignor")	("Assignee")

A Good Credit Score is 700 or Above. See Yours in Just 2 Easy Steps!

EXHIBIT 6

Message

From:	Liquid Investors Organization [liquidinvestorsorg@accesspro.net]
Sent:	5/19/2009 4:37:53 PM
To:	Diane Dalmy [REDACTED]
Subject:	Re: ZEN/PDGT

exactly..

----- Original Message -----

From: Diane Dalmy

To: 'Liquid Investors Organization'

Sent: Tuesday, May 19, 2009 11:42 AM

Subject: RE: ZEN/PDGT

Scott – I reviewed, and yes, as we discussed the procedure is acceptable, Robert Gasich as an affiliate needs to assign a portion of his debt to the individuals below. The individuals then elect pursuant to notice of conversion to convert the debt. Some transfer agents may want to issue restricted shares because that's what they are essentially. However, you then follow up the original issuance with a Rule 144(b) opinion letter stating the facts and that the shares can be issued or re-issued without the legend. It depends on the transfer agent as to whether step one actually needs to be done so that the opinion references a share certificate or is we can just move to step two with issuance of a certificate without the restrictive legend. I attach a convertible note that I just prepared for another client. We would also need board resolutions reflecting that debt was incurred as of certain date with convertible terms established, convertible note issued to reflect that debt, corporate acknowledgment of debt and issuance of note and further acknowledgment of receipt of notices to convert and subsequent issuance of shares.

Diane

From: Liquid Investors Organization [mailto:liquidinvestorsorg@accesspro.net]

Sent: Monday, May 18, 2009 1:55 PM

To: Diane Dalmy

Subject: Fw: ZEN/PDGT

Diane-

Please let me know if this is proper flow chart for debt conversion, as I have used this format in the past.

We have debt of $30,000.00 that is convertible at par value Robert Gasich (not an officer or director but 10%+ owner) – aged over 12 months. Will you please send me a copy of a standard convertible note for my review...Thanks.

I will then assign the debt to the following individuals who will elect to convert into free trading stock:

1. 49,000,000 Shares to Kymberly Nelson ($4900)
2. 49,000,000 Shares to Javorka Gasich ($4900)
3. 49,000,000 Shares to Nenad Jovanovich ($4900)
4. 49,000,000 Shares to Diana Bozovic ($4900)
5. 10 Million Shares to Downshire Capital, Inc. ($1000)
6. 4 Million Shares to Diane Dalmy ($400)
7. 37.6 Million Shares to Skyline ($3760)
8. 13 Million Shares to Vincent Camarata ($1300)

9. 13 Million Shares VLC Holdings LLC ($1300)
10. 26 Million Shares to Jon R. Latorella ($2600)
11. 400K Shares to Romero Kiep ($40)

I will assign the debt using the following documents with each of the above individuals:

Notice of Conversion

The undersigned hereby irrevocably elects to convert $1000.00 into (10,000,000) ten million shares of common stock of Zenergy International, Inc. ("Company") according to conditions set forth in such common stock certificate as of the date written below.

If shares are to be issued in the name of a person or entity other than the undersigned, the undersigned will pay all transfer and other taxes and charges payable with respect thereto.

Date of Conversion: May , 2009

Applicable Conversion Price: $.0001

Shares are to be registered in the following name:

Name: Downshire Capital, Inc.

Address: 1980 Sherbrooke St., Suite 1110, H3H 1 E8, Montreal, Quebec

____

Downshire Capital, Inc.

(TAX ID)

Assignment of Debt

Robert Gasich

("Assignor")

Downshire Capital, Inc. ("Assignee")

THIS ASSIGNMENT made this __ day of May, 2009 by and between Robert Gasich ("Assignor") and Downshire Capital, Inc.. ("Assignee")

=0 A

Witnesseth, that for valuable consideration in hand of significance received "Consulting Services" by the Assignee in support of the Assignor, receipt of which hereby is acknowledged;

The Assignor hereby assigns and transfers to Downshire Capital, Inc. $1000.00 of assignable debt of Zenergy International, Inc. (successor to Paradigm Tactical Solutions, Inc.), held beneficially and of record by the Assignor.

IN WITNESS WHEREOFF, the Assignor has executed this Assignment on the day and year first above written.
This assignment is without recourse to the Assignee.

Robert Gasich ("Assignor")	Downshire Capital, Inc. ("Assignee")

A Good Credit Score is 700 or Above. See Yours in Just 2 Easy Steps!

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.336 / Virus Database: 270.12.33/2120 - Release Date: 05/18/09 06:28:00

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.339 / Virus Database: 270.12.34/2122 - Release Date: 05/19/09 06:21:00

EXHIBIT 7

Message

From:	Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent:	6/3/2009 3:39:30 PM
To:	Diane Dalmy [redacted]
Subject:	bob's debt

diane,

since bob is an affiliate with zenergy (10%),not a director or control person do you see any violations of rule 144 that could ever come back to haunt us..

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.339 / Virus Database: 270.12.50/2150 - Release Date: 06/02/09 06:47:00

Plaintiff's Exhibit
Exhibit No.: 37
Name: Diane Dalmy
Date: 10-10-14
ESQUIRE

EXHIBIT 8

Message

From:	Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent:	3/19/2009 2:21:22 AM
To:	rick@stockawarenessgroup.com; vince; jonl@lpsecuremail.com
CC:	Daniel Ryan; Diane Dalmy
Subject:	the deal is off with naturally splendid

hi everyone,

the deal is off with naturally splendid but we're still going to continue restructuring pdgt and merge a company into it. maybe it was best this didn't happen..i will be email everyone a few companies tonight and tomorrow

Hi Scott,

He hasn't changed his mind.

He is just getting push back from his investors.

I spoke to him and Bryan about the PDGT structure.

It is to harsh for their BOD to accept.

We are at an impass that is going to be tough to overcome.

I will send you another deal for PDGT.

Cheers,

Dan

--- On **Wed, 3/18/09, Liquid Investors Organization** <*liquidinvestorsorg@accesspro.net*> wrote:

From: Liquid Investors Organization <liquidinvestorsorg@accesspro.net>
Subject: craig hasn't responded to our calls or emails in 2 days.maybe he had a change of heart.
To: "Daniel Ryan" <firstsummitcapital@yahoo.ca>
Received: Wednesday, March 18, 2009, 4:53 PM

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

Exhibit
Exhibit No.: 22
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

Now with a new friend-happy design! Try the new Yahoo! Canada Messenger

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.18/2009 - Release Date: 3/18/2009 7:17 AM

Message

From:	Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent:	3/6/2009 6:56:37 PM
To:	Diane Dalmy
Subject:	Re: how's everything coming along?

Yes, he already sent everything to FINRA and SEC..Call him, here's his number Michael Cummings [redacted]

----- Original Message -----
From: Diane Dalmy
To: 'Liquid Investors Organization'
Sent: Friday, March 06, 2009 12:49 PM
Subject: RE: how's everything coming along?

Does he know how to accomplish that? Doe she need assistance? That may take a while re FINRA. Should I call him – not sure if I have his number any longer because I thought he was sending an email with contact info.

From: Liquid Investors Organization [mailto:liquidinvestorsorg@accesspro.net]
Sent: Friday, March 06, 2009 10:48 AM
To: Diane Dalmy
Subject: Re: how's everything coming along?

he's reverse splitting his stock..unreal..i will keep updated..

----- Original Message -----
From: Diane Dalmy
To: 'Liquid Investors Organization'
Sent: Friday, March 06, 2009 12:42 PM
Subject: RE: how's everything coming along?

Ok – thanks. Just keep me posted at your convenience. And as of today, I have not received anything from Michael re SEIN.

From: Liquid Investors Organization [mailto:liquidinvestorsorg@accesspro.net]
Sent: Friday, March 06, 2009 9:24 AM
To: Diane Dalmy
Subject: Re: how's everything coming along?

no, that was for pdgt

----- Original Message -----
From: Diane Dalmy
To: 'Liquid Investors Organization'
Sent: Thursday, March 05, 2009 2:57 PM
Subject: RE: how's everything coming along?

Thanks for the confirmation. Also, I had had a conference call couple of days ago re issuance of further shares to achieve control block signatures. Do you know anything of this? And was your question below related to Michael re SEIN?

Plaintiff's Exhibit
Exhibit No.: 23
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

From: Liquid Investors Organization [mailto:liquidinvestorsorg@accesspro.net]
Sent: Thursday, March 05, 2009 12:53 PM
To: Diane Dalmy
Subject: Re: how's everything coming along?

pdgt is working on getting the last block of the control block..they said they're getting it. dan is meeting with craig goodwin, ceo of naturally splendid which is merging into pgdt to go over their debt to convert into equity..michael is figuring out his debt to convert..stay tune..i am all over it.

----- Original Message -----
From: Diane Dalmy
To: 'Liquid Investors Organization'
Sent: Thursday, March 05, 2009 2:49 PM
Subject: RE: how's everything coming along?

Scott – I am getting confused somewhat on these various companies. What is the status with Paradigm? And as indicated yesterday, I have heard anything from Michael re SEIN.

Thanks for the update.

Diane

From: Liquid Investors Organization [mailto:liquidinvestorsorg@accesspro.net]
Sent: Thursday, March 05, 2009 10:48 AM
To: Diane Dalmy
Subject: Fw: how's everything coming along?

----- Original Message -----
From: Liquid Investors Organization
To: Michael Cummings
Sent: Thursday, March 05, 2009 12:44 PM
Subject: Re: how's everything coming along?

$200,000 dollars worth. what's the problem with the TA?

----- Original Message -----
From: Michael Cummings
To: 'Liquid Investors Organization'
Sent: Thursday, March 05, 2009 11:40 AM
Subject: RE: how's everything coming along?

Having some problems with the transfer agent also, how many shares do you need for the IR?

From: Liquid Investors Organization [mailto:liquidinvestorsorg@accesspro.net]
Sent: Wednesday, March 04, 2009 8:24 PM
To: Michael Cummings
Subject: how's everything coming along?

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.8/1985 - Release Date: 3/5/2009 7:54 AM

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Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.8/1985 - Release Date: 3/5/2009 7:54 AM

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Version: 7.5.557 / Virus Database: 270.11.8/1985 - Release Date: 3/5/2009 7:54 AM

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Version: 7.5.557 / Virus Database: 270.11.8/1985 - Release Date: 3/5/2009 7:54 AM

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Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.8/1987 - Release Date: 3/6/2009 7:20 AM

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Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.8/1987 - Release Date: 3/6/2009 7:20 AM

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Version: 7.5.557 / Virus Database: 270.11.8/1987 - Release Date: 3/6/2009 7:20 AM

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Version: 7.5.557 / Virus Database: 270.11.8/1987 - Release Date: 3/6/2009 7:20 AM

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.8/1987 - Release Date: 3/6/2009 7:20 AM

Message

From:	Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent:	3/24/2009 8:37:59 PM
To:	Diane Dalmy [redacted]
Subject:	pdgt

diane,

vinnie said please do not communicate with rick fernandez, dino paoulcci jr,tina vasqaz or anyone else re pdgt..please call vincent to confirm..i will explain everything when we talk next. i am trying to put a deal together for pdgt .

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.19/2011 - Release Date: 3/19/2009 7:05 AM

Plaintiffs Exhibit
Exhibit No.: 24
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

EXHIBIT 9

Diane Dalmy

From: [redacted]
Sent: Monday, July 20, 2009 10:39 AM
To: Diane Dalmy
Cc: 'Liquid Investors Organization'
Subject: Re: Paradigm Tactical

www.zenergyintl.com all contact info is available there

www.pinksheets.com type in ptpc and click on company info and we updated the info there as well.

Let me know if this info works.

Bob

Sent from my Verizon Wireless BlackBerry

From: "Diane Dalmy"
Date: Mon, 20 Jul 2009 10:15:45 -0600
To: 'robert gaisch' [redacted]
Subject: Paradigm Tactical

Bob – responding to FINRA this morning regarding name change. They stated that company information was not "complete". This is the information I did not provide because I did not think the company had such information. Could you please provide such information for the company or confirm:

1. fax number;
2. email address;
3. web site address.

Thanks,
Diane

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.392 / Virus Database: 270.13.20/2250 - Release Date: 07/20/09 06:16:00

Plaintiff Exhibit
Exhibit No.: 47
Name: Diane Dalmy
Date: 10-10-14
ESQUIRE

EXHIBIT 10

Message

From:	Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent:	3/27/2009 3:46:28 AM
To:	Diane Dalmy[REDACTED]
Subject:	Fw: Zenergy Inc. and my offer to you

diane,

here's some information on our deal..it's simple tremendous..my offer to you if you accept is 4M of the debt to equity shares from my end of 34M..stock will open around 01 and go from there..

scotty

The attachment is Zenergy's BP and below are a few press releases that will be coming out after we're public.
http://www.zenergyintl.com/index.html
Zenergy International, Inc. aims to be the low cost producer of biofuels www.zenergyintl.com . The management was schooled at Ineos - www.ineos.com - world's 3rd largest chemical company with sales over $45 Billion - also our partner in all of our projects.

Some PRs; UNREAL news

1. Zenergy Acquires 3 Million Gallon Biodiesel Facility
2. Zenergy to Increase Gonzales plant to 13 Million Gallons Per Year
3. Zenergy forms JV with Ineos to construct 60 MGPY plant
4. Zenergy starts project to produce low cost ethanol and biodiesel in North Peru
5. JV under guidance from Zenergy is building 60 MGPY gallon biodiesel unit
6. Zenergy and Comanche Clean Energy work together to bring Brazilian ethanol and biodiesel to international markets
7. Zenergy's trading division signs contracts to place close to 500 million gallon Brazilian ethanol
8. Zenergy takes ownership of Brazilian sugarcane to ethanol unit
9. Partnership involving Zenergy is building 60 MGPY biodiesel unit in Montreal area.

15 more press release are in the process of being written.

Jim Ratcliffe - Wikipedia, the free encyclopedia ceo of ineos, our partner
http://business.timesonline.co.uk/tol/business/industry_sectors/industrials/article1719202.ece

.:: COMANCHE - Clean Energy ::. mou inked with them

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622

Plaintiff Exhibit
Exhibit No.: 27
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.29/2024 - Release Date: 3/26/2009 7:12 AM

EXHIBIT 11

Message

From: Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent: 4/19/2009 9:52:49 PM
To: Diane Dalmy
Subject: Fw: PDGT news..add this into what dinae wrote?something like this

----- Original Message -----
From: Liquid Investors Organization
To: [redacted]
Sent: Sunday, April 19, 2009 5:52 PM
Subject: PDGT news..add this into what dinae wrote?something like this

-- (Pink Sheets: PDGT) As of XYZ, 2009 PARADIGM TACTICAL PRODS is undergoning a change in ownership that is going to completely revamp the company and move the corporation into a new and exciting direction. Currently a very tight and secure team of corporate individuals are in preparation for the disclosure of the new entity. Certain criteria must be addressed prior to the release of any and all specifics of the new company. These items include: Completion of major reorganization, marketing materials, information/public relation departments and web page development. All of the issue are in progress and should be complete within the 2-3 weeks .
The former company, PARADIGM TACTICAL PRODS. is asking for the public to be patient and keep the questions, comments and phone calls to a minimum while the transition is in full motion. Both corporate teams are very excited with regards to the newly formed entity and feel that the new direction the company is taking will explode into a promising new business that will make an astonishing presence around the world.

Paradigm Tactical Products, Inc., a Delaware corporation trading under the symbol "PDGT.PK" announces that it has entered into an acquisition agreement with a private company. Management believes that acquisition of this private company brings tremendous business opportunity and generation of revenues to PDGT. Management of PDGT is currently undergoing its due diligence, which should culminate in execution of a final definitive agreement. PDGT is also currently undergoing re-structuring of its authorized capital in accordance with negotiations and agreements with the private company in order to consummate the acquisition. The board of directors and shareholders of PDGT approved the re-structuring, which includes a reverse stock split, and all appropriate documentation has been filed with FINRA/NASDAQ Market.

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

No virus found in this incoming message.
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Version: 8.5.339 / Virus Database: 270.12.35/2124 - Release Date: 05/20/09 06:22:00

Plaintiff's Exhibit
Exhibit No.: 28
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

EXHIBIT 12

Message

From: Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent: 4/13/2009 4:45:40 AM
To: Diane Dalmy
Subject: Re: New Stock Distribution Spreadsheet

diane,

here's the final share breakdown..all parties have agreed..now we the share exchange agreement and a pr, bob is working on one with what you sent us..see ya all tomorrow.

scotty

----- Original Message -----
From: Jon Latorella
To: 'Liquid Investors Organization'
Cc: vcamm4@aol.readnotify.com ;
Sent: Saturday, April 11, 2009 9:23 PM
Subject: New Stock Distribution Spreadsheet

Scott

Here is the new spreadsheet. Please disregard the previous version.

I believe I understand the discrepancy in the calculations.

There are currently 1,104,680,555 shares in the PUBLIC float. This will reverse to 14,729,074 shares post split. These are not owned or controlled by any PDGT affiliate and are not part of this transaction. This is the basis of the confusion.

The Zenergy/PDGT transaction is based upon the NEW issue of 514,000,000 shares with an 80/20 split. This would be 411,200,000 shares to the Zenergy Group and 102,800,000 shares to the PDGT group.

There was a recent issuance to Vincent Cammarata of 397,000,000 shares which reverses to 5,270,926 shares. If these are considered as part of the transaction then the new issuance to the PDGT should be reduced by this amount. The amount of the PDGT group issuance should then be 97,529,074.

Regards,
Jon

Never do anything against conscience even if the state demands it. -Albert Einstein

No virus found in this incoming message.
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Version: 7.5.557 / Virus Database: 270.11.53/2054 - Release Date: 4/11/2009 10:51 AM

Plaintiff Exhibit
Exhibit No.: 34
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

EXHIBIT 13

Message

From: Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent: 5/28/2009 4:06:48 PM
To: Diane Dalmy [redacted]
Subject: Re: PDGT/ZENERGY

Hi Diane,

I left you 2 vm's on each of your numbers..Dan is wiring me $5,000 today to take care of some bills of mine..I can wire you $1,000 tomorrow,is this ok? We're almost there and wouldn't want any delays,especially now..We're golden once the shares hit our accounts,payday is right around the corner.

Scotty

----- Original Message -----
From: Diane Dalmy
To: 'Liquid Investors Organization'
Sent: Thursday, May 28, 2009 11:50 AM
Subject: RE: PDGT/ZENERGY

Scott – I will start working on it. Let me ask you this – I know that I received $1500 retainer (which was used up a LONG time ago re share exchange agreement, Delaware SOS, amendment to articles, etc.). And I don't charge for any of the conference calls. All these opinions will take some time. And I know I am getting shares. But should I ask Dan for additional fee to cover the opinion letters? I am really out on legal fees on this. Let me know what you think.

Diane

From: Liquid Investors Organization [mailto:liquidinvestorsorg@accesspro.net]
Sent: Thursday, May 28, 2009 9:46 AM
To: Diane Dalmy
Subject: PDGT/ZENERGY

Dear Diane,

All the assignments will be signed and faxed back to today..Knowing that you're leaving soon, could you please let us know when you will send the TA all the paper work and your legal opinion to allow them to DWAC the said shares after the reverse split..What's the time frame on this process?

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

Plaintiff's Exhibit
Exhibit No.: 30
Name: Diane Dalmy
Date: 6-10-17
ESQUIRE

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Version: 8.5.339 / Virus Database: 270.12.43/2138 - Release Date: 05/27/09 18:21:00

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Checked by AVG - www.avg.com
Version: 8.5.339 / Virus Database: 270.12.43/2138 - Release Date: 05/27/09 18:21:00

EXHIBIT 14

Message

From: Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent: 5/31/2009 8:16:42 PM
To: Diane Dalmy [ddalmy@earthlink.net]
Subject: Fw: ZENERGY

----- Original Message -----
From: Liquid Investors Organization
To: [redacted]
Cc: vince ; joni@lpsecuremail.com
Sent: Sunday, May 31, 2009 4:16 PM
Subject: ZENERGY

Hi everyone,

I just spoke to Diane and her is what she told me..We (she can't) need to contact the state of DE online and amend the articles of incorporation to change par value to 0001 via a credit card and make sure we apply for a 24 hour turn around..We also need a board resolution appointing Zenergy's BOD and Vinny's resignation..Diane is drawing up the legal opinions,etc for the TA to issue us our shares this week..

----- Original Message -----
From: [redacted]
To: Liquid Investors Organization
Sent: Sunday, May 31, 2009 3:54 PM
Subject: Re: ZENERGY

An officer of the company needs to file the amendment. I can't do it. Can someone do it?

Sent from my Verizon Wireless BlackBerry

From: "Liquid Investors Organization"
Date: Sun, 31 May 2009 15:51:55 -0400
To: [redacted]
Subject: Re: ZENERGY
I need the amendment to be filed

tomorrow diane
----- Original Message -----
From: [redacted]
To: Liquid Investors Organization
Sent: Sunday, May 31, 2009 3:19 PM
Subject: Re: ZENERGY

Plaintiff Exhibit
Exhibit No.: 40
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

Scott first of all I finally got past all the 10k reports so I am good to go. I have brought all documents re conversion with me to start working on opinion. I need the amendment to be filed. I will work right now re opinions since my flight is delayed over two hours to la

Sent from my Verizon Wireless BlackBerry

From: "Liquid Investors Organization"
Date: Sun, 31 May 2009 13:04:55 -0400
To: Diane Dalmy[REDACTED]
Subject: ZENERGY

Hi Diane- I know that you are overwhelmed with work and you're only one person juggling a lot of other companies..I am too..Here's another offer from me to know..I'll assign another 2m of my shares to you for a total of 6m if you can (PLEASE) make sure the TA has everything needed for the shares to be DWAC'd this week after Bob takes care of the amendment for par value,etc..We're so close to making a huge score..Even if it doesn't happen this week,I'll still assign the 2m..Sorry for this email but it's like we won the lottery but cannot cash in ticket for a few weeks.

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.339 / Virus Database: 270.12.46/2144 - Release Date: 05/30/09 17:53:00

EXHIBIT 15

From: "Diane Dalmy" [redacted]>
To: "Michael Cruz" <dmichael@scottsdalecapital.com>
Cc: "Joe Padilla" <joe@scottsdalecapital.com>; "Andrea Bruno" <andrea@scottsdalecapital.com>
Sent: Wednesday, July 01, 2009 7:01 PM
Subject: RE: Paradigm Tactical Products - 144 Legal Opinion (Downshire Capital and Kymberly Nelson

Michael - thank you for your call today. In accordance with our discussion, please be advised that Robert Gasich has not been during the past twelve months nor currently is an affiliate of Zenergy or Paradigm. And, as confirmation, the verbal debt agreement is supported by a convertible note evidencing the debt.

We discussed in general the basis for my opinion under Rule 144. Please let me know if you have any further questions.

Diane

Diane D. Dalmy
Attorney at Law
8965 W. Cornell Place
Lakewood, Colorado 80227
303.985.9324 (telephone)
303.988.6954 (fax)

From: Michael Cruz [mailto:dmichael@scottsdalecapital.com]
Sent: Wednesday, July 01, 2009 11:39 AM
To: ddalmy@earthlink.net
Cc: Joe Padilla; Andrea Bruno
Subject: Paradigm Tactical Products - 144 Legal Opinion (Downshire Capital and Kymberly Nelson

Hi Diane,

I am counsel for Scottsdale Capital, a registered broker-dealer. I understand you wrote the 144 opinion concerning the PTPC shares held by our brokerage clients, Downshire Capital and Kymberly Nelson. In order to process our clients' sell orders, I am requesting clarification with respect to the debt conversion and the affiliate status of the assignee, Robert Gasich.

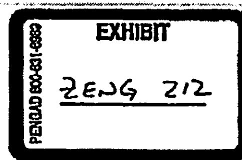
Convertible Debt.
For purposes of the holding period requirements, the tacking period dates back to April 17, 2008 when Zenergy and Gasich "verbally" agreed to amend the Zenergy Debt to allow for a cashless conversion. The question is whether you have any authority to support your finding that a "verbal" amendment can be used for tacking purposes under Rule 144. The second questions is whether there was any consideration paid to modify the Zenergy Debt. I am not saying I have any contrary authority, I just seek clarification on your position here.

Under the SEC footnote to 144(d)(3)(ii), it provides if the original securities do not permit cashless conversion or exchange then the newly acquired securities will be deemed to have been acquired on the date that the original securities were <u>so amended</u> by their terms; provided:

- The parties amend the original securities to allow for cashless conversion or exchange; and
- The security holder provides consideration, other than solely securities of the issuer, for that amendment.

From the above, 144 requires consideration for the amendment, which the legal does not address.

Affiliate Status.
This one is easier. The question is whether you considered the affiliate status of Robert Gasich. I apologize if this was covered in your opinion.



Plaintiff Exhibit
Exhibit No.: 46
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

12/2/2010

Because of the amount of shares being deposited, our procedures call for heightened due diligence. . Call me at your earliest convenience to discuss.

Regards,

D. Michael Cruz
LEGAL COUNSEL

Scottsdale Capital Advisors
Member FINRA & SIPC

7170 E McDonald Road, Suite 6
Scottsdale, AZ 85253
(480) 603-4929 Direct
(480) 603-4901 Fax
dmichael@scottsdalecapitalcom Email

Checked by AVG - www.avg.com
Version: 8.5.375 / Virus Database: 270.13.1/2212 - Release Date: 07/01/09 05:53:00

EXHIBIT 16

Yvonne Mui

From: Liquid Investors Organization [liquidinvestorsorg@accesspro.net]
Sent: Saturday, June 20, 2009 6:55 PM
To: Yvonne Mui
Cc: Kal Eldaher; Steven Trigili
Subject: Fw: Rule 144 opinion letters
Attachments: Paradigm Rule 144 opinion.DOC; Paradigm Rule 144(b) opinion.DOC; scan0112.jpg; scan0113.jpg

----- Original Message -----
From: Diane Dalmy
To: liquidinvestorsorg@accesspro.net ; [redacted]
Cc: 'Vincent Cammarata'
Sent: Tuesday, June 16, 2009 3:39 PM
Subject: Rule 144 opinion letters

Attached is the Rule 144(b) opinion and the Rule 144 opinion for your submission to the transfer agent with supporting documentation.

Diane D. Dalmy
Attorney at Law
8965 W. Cornell Place
Lakewood, Colorado 80227
303.985.9324 (telephone)
303.988.6954 (fax)

2009/06/22 08:57 15s

Plaintiff Exhibit
Exhibit No.: 45
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

EXHIBIT
ZENG 211
PENGAD 800-631-6989

DIANE D. DALMY
ATTORNEY AT LAW
8965 W. CORNELL PLACE
LAKEWOOD, COLORADO 80227
303.985.9324 (telephone)
303.988.6954 (facsimile)
email: [redacted]

June 15, 2009

Pacific Stock Transfer Inc.
500 E. Warm Springs Road
Suite 240
Las Vegas, Nevada

Re: Rule 144 Sale of Shares of Common Stock
of Paradigm Tactical Products Inc.

To Whom It May Concern:

I have acted as securities counsel to Paradigm Tactical Products Inc., a corporation organized under the laws of the State of Delaware (the "Corporation"). This opinion is written in connection with the settlement of debt in the amount of $30,000.00 (the "Zenergy Debt") between Zenergy Inc., a corporation organized under the laws of the State of Nevada ("Zenergy") and Robert Gasich ("Gasich"). The Zenergy Debt is evidenced by and reflected in the financial statements of Zenergy as of April 17, 2008. As at April 17, 2008, Zenergy and Gasich verbally agreed and established that the Zenergy Debt could be convertible at Gasich's sole option into shares of common stock of Zenergy at $0.0001 per share.

Subsequently, the Corporation, Zenergy and the shareholders of Zenergy (the "Zenergy Shareholders") entered into that certain share exchange agreement dated May 28, 2009 (the "Share Exchange Agreement"), pursuant to which the Corporation agreed to acquire one hundred percent of the total issued and outstanding shares of common stock of Zenergy in exchange for the issuance of 216,232,100 shares of the restricted common stock of the Corporation and to further assume the Zenergy Debt and issue shares of its common stock as settlement of the Zenergy Debt.

6. Certificate of Amendment to Certificate of Incorporation as filed with the Delaware Secretary of State on June 1, 2009 changing the par value of the Corporation's shares of common stock to $0.0001.

I have also investigated such other matters and examined such other documents as I have deemed necessary in connection with the rendering of this opinion. In examining these documents, I have assumed the genuineness of the signatures not witnessed, the authenticity of documents submitted as originals, and the conformity to originals of documents submitted as copies. This opinion is based solely on the facts and assumptions as set forth in this opinion and is limited to the investigation and examinations and such other investigation as I deemed necessary.

Based on the information provided and on my examination of the documents previously discussed, I find as follows:

1. The issuance of the aggregate 26,000,000 shares of common stock of the Corporation to the Assignee will be acquired by the Assignee from the Corporation in a private transaction pursuant to the terms of the Share Exchange Agreement, the Zenergy Debt and the Partial Assignment of Zenergy Debt. At the date of the Zenergy Debt, full consideration was given and received and the shares were deemed fully paid and non-assessable.

2. In accordance with the terms and provisions of the Partial Assignment of Zenergy Debt, Gasich assigned a portion of his right, title and interest in and to the Zenergy Debt proportionately to the Assignee.

3. The Assignee shall not solicit offers to buy the shares of Common Stock while the sale of the shares of Common Stock is pending.

4. The Assignee has held the shares of Common Stock for in excess of six months from the date of the Debt, which date is April 17, 2008. The six month holding period under Rule 144 started on April 17, 2008.

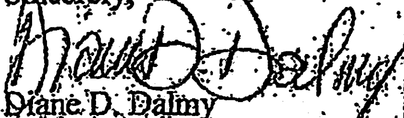
5. Such shares of Common Stock may be resold in accordance with Rule 144 only in the event current public information is available regarding the Corporation, and such current information is available to the public.

6. The Corporation is not a shell corporation as defined in Rule 230.405 of the Securities Act.

Based on the above, I am of the opinion that the resale requirements of Rule 144 have been met and, effective June 3, 2009, the Assignee may sell the shares. This sale will be exempt from the registration requirements of the Act under the exemption set forth in Rule 144.

The Corporation, Pacific Stock Transfer Inc., any broker-dealer, any clearing firm and the Assignee are authorized to present this letter and to rely on this opinion in selling the shares of common stock and in registering transfer thereof. No other use of this opinion is authorized.

Sincerely,



Diane D. Dalmy

DIANE D. DALMY
ATTORNEY AT LAW
8965 W. CORNELL PLACE
LAKEWOOD, COLORADO 80227
303.985.9324 (telephone)
303.988.6954 (facsimile)
email: [redacted]

June 15, 2009

Pacific Stock Transfer Inc.
500 E. Warm Springs Road
Suite 240
Las Vegas, Nevada

Re: Rule 144(b) Sale of Shares of Common Stock
of Paradigm Tactical Products Inc..

To Whom It May Concern:

I have acted as securities counsel to Paradigm Tactical Products Inc., a corporation organized under the laws of the State of Delaware (the "Corporation"). This opinion is written in connection with the settlement of debt in the amount of $30,000.00 (the "Zenergy Debt") between Zenergy Inc., a corporation organized under the laws of the State of Nevada ("Zenergy") and Robert Gasich ("Gasich"). The Zenergy Debt is evidenced by and reflected in the financial statements of Zenergy as of April 17, 2008. As at April 17, 2008, Zenergy and Gasich verbally agreed and established that the Zenergy Debt could be convertible at Gasich's sole option into shares of common stock of Zenergy at $0.0001 per share.

Subsequently, the Corporation, Zenergy and the shareholders of Zenergy (the "Zenergy Shareholders") entered into that certain share exchange agreement dated May 28, 2009 (the "Share Exchange Agreement"), pursuant to which the Corporation agreed to acquire one hundred percent of the total issued and outstanding shares of common stock of Zenergy in exchange for the issuance of 216,232,100 shares of the restricted common stock of the Corporation and to further assume the Zenergy Debt and issue shares of its common stock as settlement of the Zenergy Debt.

2009/06/22 08:57:28

6. Certificate of Amendment to Certificate of Incorporation as filed with the Delaware Secretary of State on June 1, 2009 changing the par value of the Corporation's shares of common stock to $0.0001.

I have also investigated such other matters and examined such other documents as I have deemed necessary in connection with the rendering of this opinion. In examining these documents, I have assumed the genuineness of the signatures not witnessed, the authenticity of documents submitted as originals, and the conformity to originals of documents submitted as copies. This opinion is based solely on the facts and assumptions as set forth in this opinion and is limited to the investigation and examinations and such other investigation as I deemed necessary.

Based on the information provided and on my examination of the documents previously discussed, I find as follows:

1. The issuance of the aggregate 274,000,000 shares of common stock of the Corporation to the Assignees will be acquired by the Assignees from the Corporation in a private transaction pursuant to the terms of the Share Exchange Agreement, the Zenergy Debt and the Partial Assignment of Zenergy Debt. At the date of the Zenergy Debt, full consideration was given and received and the shares were deemed fully paid and non-assessable.

2. In accordance with the terms and provisions of the Partial Assignment of Zenergy Debt, Gasich assigned a portion of his right, title and interest in and to the Zenergy Debt proportionately to the respective Assignees.

3. The Assignees shall be deemed to have held the shares of common stock for in excess of one (1) year from the date of April 17, 2008 as established by the Zenergy Debt based upon the revised Rule 144 effective February 15, 2008.

The Corporation, Pacific Stock Transfer Inc., any broker-dealer, any clearing firm and the Assignees are authorized to present this letter and to rely on this opinion in selling the shares of common stock and in registering transfer thereof. No other use of this opinion is authorized.

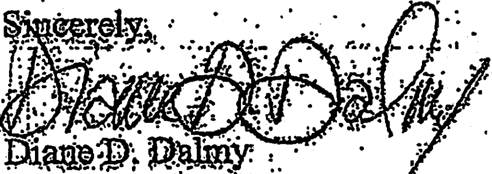
Sincerely,

Diane D. Dalmy

Pacific Stock Transfer Inc.
Page Five
June 15, 2009

The Corporation, Pacific Stock Transfer Inc., any broker-dealer, any clearing firm and the Assignees are authorized to present this letter and to rely on this opinion in selling the shares of common stock and in registering transfer thereof. No other use of this opinion is authorized.

Sincerely,



Diane D. Dalmy

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

ZENERGY INTERNATIONAL, INC.
CONVERTIBLE PROMISSORY NOTE

April 7, 2008
Chicago, Illinois

1. Principal and Interest.

1.1 Zenergy International, Inc., a Nevada corporation (the "Company"), for value received, hereby promises to pay to the order of Robert Gasich (the "Investor" or the "Holder") the sum of Thirty Thousand Dollars ($30,000.00), which amount is reflected on the Company's records as due and owing to Holder as of April 7, 2008, at the time and in the manner hereinafter provided.

1.2 This Convertible Promissory Note (the "Note") shall not bear any interest from the date of issuance of this Note. This Note shall be payable upon demand ("Demand Date"). Commencing on the Demand Date, all principal hereunder shall be payable by the Company upon demand made by the Investor.

1.3 Upon payment in full of the principal hereof, this Note shall be surrendered to the Company for cancellation.

1.4 The principal of this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Investor.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal hereunder into a number of fully paid and nonassessable whole shares of the Company's par value common stock ("Common Stock") determined in accordance with Section 3.2 below.

2009/06/22 08:57 44S

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

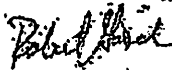
15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

IN WITNESS WHEREOF, Zenergy International, Inc. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

Zenergy International, Inc.

By ______________________
President / CEO

HOLDER



____
Robert Gasich

Assignment of Debt

Robert Gasich ("Assignor")

Skyline Capital Investment, Inc. ("Assignee")

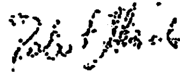
THIS ASSIGNMENT made this 3rd day of June, 2009 by and between Robert Gasich ("Assignor") and Skyline Capital Investment, Inc. ("Assignee").

Witnesseth, that for valuable consideration in hand of significance received "Consulting Services" by the Assignee in support of the Assignor, receipt of which hereby is acknowledged;

The Assignor hereby assigns and transfers to Skyline Capital Investment, Inc. $3,760.00 of assignable debt of Zenergy International, Inc. (successor to Paradigm Tactical Solutions, Inc.), held beneficially and of record by the Assignor.

IN WITNESS WHEREOFF, the Assignor has executed this Assignment on the day and year first above written.

This assignment is without recourse to the Assignee.



Robert Gasich

("Assignor")

Skyline Capital Investment, Inc.

("Assignee")

2009/06/22 08:57 39s

Notice of Conversion

The undersigned hereby irrevocably elects to convert $3,760.00 into (37,600,000) thirty-seven million six hundred thousand shares of common stock of Zenergy International, Inc. ("Company") according to conditions set forth in such common stock certificate as of the date written below.

If shares are to be issued in the name of a person or entity other than the undersigned, the undersigned will pay all transfer and other taxes and charges payable with respect thereto.

Date of Conversion: June 3, 2009

Applicable Conversion Price: $.0001

Shares are to be registered in the following name:

Name: Skyline Capital Investments, Inc.

Address: 688 NW 156th Ave, Pembroke Pines, Florida 33028

Skyline Capital Investments, Inc.
(TAX ID 85-1075112)

2009/06/22 08:57:35

EXHIBIT 17

Diane Dalmy

From: [redacted]
Sent: Thursday, June 04, 2009 7:35 PM
To: [redacted]
Subject: Zen/PTPC open items
Attachments: Jgasich.tif; Ned_Executed_agreement.pdf; Nelson Executed note 2.jpg; Neslon executed note 1.jpg

Diane-

Here are 3 of the 4 debt assignments with the 4th to be sent to you tomorrow morning.

Here is the list of shareholders that will receive new shares of restricted PTPC (1 old Zenergy share for 7 new shares). Do we need to reduce this onto our letterhead?

216,232,100 in exchange for 100% of Zenergy shares:

Philip Bowen 175,000 Shares

Edwin Fritz 1,400,000 Shares

The Spire Group, LLC 66,663,331 shares

Robert Luiten 66,663,331shares

William Lutz 2,100,000 shares

Larry Marlin 10,850,000 shares

Tammy McIntyre 66,614,338 shares

Fred Swann 7000 shares

Richard Swann 7000 shares

Joseph Verstuft 1,052,100 shares

HEG Holdings 700,000 shares

I believe we have the following open items:

1. Do we issue these new shares to arrive at your office along with delivering our Zenergy shares in exchange for the new ones. Please advise us of your logistical preference.
2. Can you prepare a copy of Zenergy's board of director resolution ratifying the Zenergy Debt and terms thereof. If we don't have, we will need to prepare with current date but effective of May 2007 - the date of the note - please adjust date on legal opinions.
3. Can you prepare Resolution: (i) approval of the Share Exchange Agreement and issuance of shares; and (ii) acceptance of the resignation of Vinny and approval of appointment of new

Plaintiff Exhibit
Exhibit No.: 38
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

directors/officers.
4. DWAC to be sent to Transfer Agent with coordinates
5. Name and symbol change - when do we request this?

Let me know what else we need to do to satisfy this transaction. Also, please do not foward the attached documents as they contain personal/private information.

Thanks a bunch.

Bob

Limited Time Offers: Save big on popular laptops at Dell

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.339 / Virus Database: 270.12.53/2154 - Release Date: 06/04/09 05:53:00

EXHIBIT 18

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

ZENERGY INTERNATIONAL, INC.
CONVERTIBLE PROMISSORY NOTE

April 7, 2008
Chicago, Illinois

1. Principal and Interest.

1.1 Zenergy International, Inc., a Nevada corporation (the "Company"), for value received, hereby promises to pay to the order of Robert Gasich (the "Investor" or the "Holder") the sum of Thirty Thousand Dollars ($30,000.00), which amount is reflected on the Company's records as due and owing to Holder as of April 7,, 2008, at the time and in the manner hereinafter provided.

1.2 This Convertible Promissory Note (the "Note") shall not bear any interest from the date of issuance of this Note. This Note shall be payable upon demand ("Demand Date"). Commencing on the Demand Date, all principal hereunder shall be payable by the Company upon demand made by the Investor.

1.3 Upon payment in full of the principal hereof, this Note shall be surrendered to the Company for cancellation.

1.4 The principal of this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Investor.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal hereunder into a number of fully paid and nonassessable whole shares of the Company's par value common stock ("Common Stock") determined in accordance with Section 3.2 below.

Zenergy International, Inc.
SEC File No. C-07707
WDCO.00078

3.2 Shares Issuable. The number of whole shares of Common Stock into which this Note may be voluntarily converted ("Conversion Shares") shall be determined by dividing the aggregate principal amount borrowed hereunder by the par value (the "Note Conversion Price").

3.3 Notice and Conversion Procedures. After receipt of demand for repayment, the Company agrees to give the Holder notice at least five (5) business days prior to the time that the Company repays this Note. If the Holder elects to convert this Note, the Holder shall provide the Company with a written notice of conversion setting forth the amount to be converted. The notice must be delivered to the Company together with this Note. Within twenty (20) business days of receipt of such notice, the Company shall deliver to the Holder certificate(s) for the Common Stock issuable upon such conversion and, if the entire principal amount hereunder was not so converted, a new note representing such balance.

3.4 Other Conversion Provisions.

(a) Adjustment of Note Conversion Price. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a reverse stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be adjusted by proportionately increasing the Note Conversion Price on the date that such subdivision shall become effective. In the event the Company shall in any manner, subsequent to the issuance of this Note, approve a reclassification involving a forward stock split and subdivision of the Company's issued and outstanding shares of Common Stock, the Note Conversion Price shall forthwith be adjusted by proportionately decreasing the Note Conversion Price on the date that such subdivision shall become effective.

(b) Common Stock Defined. Whenever reference is made in this Note to the shares of Common Stock, the term "Common Stock" shall mean the Common Stock of the Company authorized as of the date hereof, and any other class of stock ranking on a parity with such Common Stock. Shares issuable upon conversion hereof shall include only shares of Common Stock of the Company.

3.5 No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal hereunder that is not so converted.

4. Representations, Warranties and Covenants of the Company. The Company represents, warrants and covenants with the Holder as follows:

(a) Authorization; Enforceability. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Note and the performance of all obligations of the Company hereunder has been taken, and this Note constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

6. Assignment. Subject to the restrictions on transfer described in Section 9 below, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Holder.

8. Transfer of This Note or Securities Issuable on Conversion Hereof. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, the Holder will give written notice to the Company prior thereto, describing briefly the manner thereof. Unless the Company reasonably determines that such transfer would violate applicable securities laws, or that such transfer would adversely affect the Company's ability to account for future transactions to which it is a party as a pooling of interests, and notifies the Holder thereof within five (5) business days after receiving notice of the transfer, the Holder may effect such transfer. The Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the 1933 Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the 1933 Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

9. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery if personally delivered or three (3) business days after deposit if deposited in the United States mail for mailing by certified mail, postage prepaid, and addressed as follows:

If to Investor: Robert Gasich
429 W. Ohio Street #127
Chicago, IL 60610

If to Company: Zenergy International, Inc.
429 W. Ohio Street #127
Chicago, IL 60610

Each of the above addressees may change its address for purposes of this Section by giving to the other addressee notice of such new address in conformance with this Section.

10. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of Nevada, without regard to the conflicts of laws provisions thereof.

11. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except as otherwise indicated, all references herein to Sections refer to Sections hereof.

12. Waiver by the Company. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

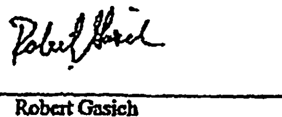
15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

IN WITNESS WHEREOF, Zenergy International, Inc. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

Zenergy International, Inc.

By ______________________
President / CEO

HOLDER



____
Robert Gasich

EXHIBIT 19

DIANE D. DALMY
ATTORNEY AT LAW
8965 W. CORNELL PLACE
LAKEWOOD, COLORADO 80227
303.985.9324 (telephone)
303.988.6954 (facsimile)
email: [redacted]

August 26, 2009

Wilson Davis & Company
236 S. Main Street
Salt Lake City, Utah 84101

Pacific Stock Transfer Inc.
500 E. Warm Springs Road
Suite 240
Las Vegas, Nevada

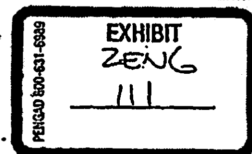
Re: Rule 144(b) Sale of Shares of Common Stock of Zenergy Holdings Inc., formerly known as Paradigm Tactical Products Inc..

To Whom It May Concern:

I have acted as special counsel to Zenergy Holdings Inc., formerly known as Paradigm Tactical Products Inc., a corporation organized under the laws of the State of Delaware (the "Corporation"). This opinion is written in connection with the issuance of share certificate no. 1554 to Investing in Stock Market Inc. ("IISM") in the aggregate denomination of 3,000,000 shares of common stock of the Corporation.

The 3,000,000 shares of common stock evidenced by share certificate no. 1554 were originally issued in connection with the settlement of debt in the amount of $30,000.00 (the "Zenergy Debt") between Zenergy Inc., a corporation organized under the laws of the State of Nevada ("Zenergy") and Robert Gasich ("Gasich"). The Zenergy Debt is evidenced by and reflected in the financial statements of Zenergy as of April 17, 2008. As at April 17, 2008, Zenergy and Gasich agreed and established that the Zenergy Debt could be convertible at Gasich's sole option into shares of common stock of Zenergy at $0.0001 per share.

Plaintiff/Exhibit
Exhibit No.: 48
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE



Subsequently, the Corporation, Zenergy and the shareholders of Zenergy (the "Zenergy Shareholders") entered into that certain share exchange agreement dated May 28, 2009 (the "Share Exchange Agreement"), pursuant to which the Corporation agreed to acquire one hundred percent of the total issued and outstanding shares of common stock of Zenergy in exchange for the issuance of 216,232,100 shares of the restricted common stock of the Corporation and to further assume the Zenergy Debt and issue shares of its common stock as settlement of the Zenergy Debt.

In further accordance with the terms and provisions of those certain partial assignments of the Zenergy Debt dated effective June 1, 2009 between Gasich and those certain assignees as listed (collectively, the "Partial Assignment of Zenergy Debt"), Gasich assigned a pro-rata portion of his right, title and interest in and to the Zenergy Debt to certain assignees (collectively, the "Assignees") and individually as follows: (i) Downshire Capital, Inc. in the amount of $1,000.00; (ii) Skyline Capital Investments Inc. in the amount of $3,760.00; (iii) Sigma Consulting Group LLC in the amount of $2,600.00; (iv) Romero Kiep in the amount of $40.00; (v) Kymberly Nelson in the amount of $4,900.00; (vi) Javorka Gasich in the amount of $4,900.00; (vii) Nenad Jovanovich in the amount of $4,900.00; (viii) Diana Bozovic in the amount of $4,900.00; and (ix) Diane Dalmy in the amount of $400.00.

In accordance with the subsequent receipt of notices of conversion dated June 3, 2009 from the Assignees (collectively, the "Notice of Conversion") and settlement of the Debt by issuance of an aggregate of 274,000.00 shares of Common Stock of the Corporation to the Assignees, I am of the opinion that: (i) effective June 3, 2009, the restrictive legend may be removed from such share certificates to be issued to the Assignees; and (ii) the shares of common stock may be sold by the Assignees free of any restrictions on transfer without registration under the Securities Act of 1933, as amended (the "Act") pursuant to Rule 144(b) of the Act.

Lastly, effective August 7, 2009, Skyline Capital Investments Inc., an Assignee ("Skyline"), gifted 3,000,000 shares of common stock of the Company held of record by Skyline to IISM.

In connection with this opinion, I have examined the following:

1. Board of Director Resolutions of Zenergy dated June 2, 2009 effective June 1, 2006 ratifying and acknowledging the terms and provisions of the Zenergy Debt (the "Zenergy Board Resolutions").

2. Board of Director Resolutions of the Corporation dated June 3, 2009: (i) ratifying and acknowledging the terms and provisions of the Zenergy Debt; (ii) approving the assumption of the Zenergy Debt; (iii) acknowledging the Partial Assignment of Zenergy Debt; (iv) acknowledging receipt of the Notices of Conversion from the Assignees; and (v) approving the issuance of the aggregate 274,000,000 shares of common stock to the Assignees.

3. Share Exchange Agreement.

4. The Partial Assignment of Zenergy Debt.

5. The Notices of Conversion.

6. Certificate of Amendment to Certificate of Incorporation as filed with the Delaware Secretary of State on June 1, 2009 changing the par value of the Corporation's shares of common stock to $0.0001.

7. The Acknowledgement of Gift of Shares dated August 7, 2009 signed by a representative of Skyline.

I have also investigated such other matters and examined such other documents as I have deemed necessary in connection with the rendering of this opinion. In examining these documents, I have assumed the genuineness of the signatures not witnessed, the authenticity of documents submitted as originals, and the conformity to originals of documents submitted as copies. This opinion is based solely on the facts and assumptions as set forth in this opinion and is limited to the investigation and examinations and such other investigation as I deemed necessary.

Based on the information provided and on my examination of the documents previously discussed, I find as follows:

1. The issuance of the aggregate 3,000,000 shares of common stock of the Corporation to IISM was pursuant to a gift of those shares by Skyline effective August 7, 2009. The original 274,000,000 shares of common stock of the Corporation issued to the Assignees (of which Skyline is included) were acquired by the Assignees from the Corporation in a private transaction pursuant to the terms of the Share Exchange Agreement, the Zenergy Debt and the Partial Assignment of Zenergy Debt. At the date of the Zenergy Debt, full consideration was given and received and the shares were deemed fully paid and non-assessable.

2. In accordance with the terms and provisions of the Partial Assignment of Zenergy Debt, Gasich assigned a portion of his right, title and interest in and to the Zenergy Debt proportionately to the respective Assignees.

3. The Assignees and IISM shall be deemed to have held the shares of common stock for in excess of one (1) year from the date of April 17, 2008 as established by the Zenergy Debt based upon the revised Rule 144 effective February 15, 2008.

4. None of the Assignees nor IISM are currently nor have been during the preceding three months an affiliate of the Corporation as that term is defined by Rule 144. None of the Assignees nor IISM are officers or directors of the Corporation nor a party in any manner of contract with the Corporation that would suggest a controlled relationship and none of the Assignees nor IISM shall be considered an underwriter with respect to the shares within the meaning of Section 2(11) of the Act. None of the Assignees nor IISM are under control of either the Corporation or any of its officers and directors.

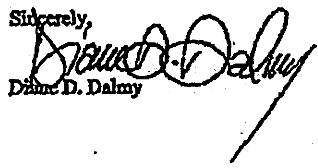
5. The Corporation is not and has not been a shell corporation as defined in Rule 230.405 of the Securities Act.

Based on the above, I am of the opinion that: (i) as of June 3, 2009, the restrictive legend may be removed from the share certificates issued to the Assignees representing in the aggregate the 274,000,000 shares of common stock of the Corporation; (ii) as of August 7, 2009, the restrictive legend may be removed from share certificate no. 1554 issued to IISM; (iii) as of June 3, 2009, the requirements of Rule 144(b) have been met and the sale of the shares of common stock of the Corporation evidenced by the share certificates issued to the respective Assignees will be exempt from the registration requirements of the Act under the exemption set forth in Rule 144(b); (iv) as of August 7, 2009, the requirements of Rule 144(b) have been met and the sale of the shares of common stock of the Corporation evidenced by share certificate no. 1554 issued to IISM will be exempt from the registration requirements of the Act under the exemption set forth in Rule 144(b); and (v) the shares of common stock may be subsequently sold or transferred by the Assignees and IISM free of any restrictions on transfer.

Wilson David & Co.
Page Five
August 26, 2009

The Corporation, Pacific Stock Transfer Inc., any broker-dealer, any clearing firm, the Assignees and IICM are authorized to present this letter and to rely on this opinion in selling the shares of common stock and in registering transfer thereof. No other use of this opinion is authorized.

Sincerely,



Diane D. Dalmy

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933.

ZENERGY INTERNATIONAL, INC.
CONVERTIBLE PROMISSORY NOTE

April 7, 2008
Chicago, Illinois

1. Principal and Interest.

1.1 Zenergy International, Inc., a Nevada corporation (the "Company"), for value received, hereby promises to pay to the order of Robert Gasich (the "Investor" or the "Holder") the sum of Thirty Thousand Dollars ($30,000.00), which amount is reflected on the Company's records as due and owing to Holder as of April 7,, 2008, at the time and in the manner hereinafter provided.

1.2 This Convertible Promissory Note (the "Note") shall not bear any interest from the date of issuance of this Note. This Note shall be payable upon demand ("Demand Date"). Commencing on the Demand Date, all principal hereunder shall be payable by the Company upon demand made by the Investor.

1.3 Upon payment in full of the principal hereof, this Note shall be surrendered to the Company for cancellation.

1.4 The principal of this Note shall be payable at the principal office of the Company and shall be forwarded to the address of the Holder hereof as such Holder shall from time to time designate.

2. Attorney's Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by the Investor.

3. Conversion.

3.1 Voluntary Conversion. The Holder shall have the right, exercisable in whole or in part, to convert the outstanding principal hereunder into a number of fully paid and nonassessable whole shares of the Company's par value common stock ("Common Stock") determined in accordance with Section 3.2 below.

3.2 Shares Issuable. The number of whole shares of Common Stock into which this Note may be voluntarily converted ("Conversion Shares") shall be determined by dividing the aggregate principal amount borrowed hereunder by the par value (the "Note Conversion Price").

3.3 Notice and Conversion Procedures. After receipt of demand for repayment, the Company agrees to give the Holder notice at least five (5) business days prior to the time that the Company repays this Note. If the Holder elects to convert this Note, the Holder shall provide the Company with a written notice of conversion setting forth the amount to be converted. The notice must be delivered to the Company together with this Note. Within twenty (20) business days of receipt of such notice, the Company shall deliver to the Holder certificate(s) for the Common Stock issuable upon such conversion and, if the entire principal amount hereunder was not so converted, a new note representing such balance.

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(b) Common Stock Defined. Whenever reference is made in this Note to the shares of Common Stock, the term "Common Stock" shall mean the Common Stock of the Company authorized as of the date hereof, and any other class of stock ranking on a parity with such Common Stock. Shares issuable upon conversion hereof shall include only shares of Common Stock of the Company.

3.5 No Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of this Note. In lieu of the Company issuing any fractional shares to the Holder upon the conversion of this Note, the Company shall pay to the Holder the amount of outstanding principal hereunder that is not so converted.

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(a) Authorization; Enforceability. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Note and the performance of all obligations of the Company hereunder has been taken, and this Note constitutes a valid and legally binding obligation of the Company, enforceable in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(b) Governmental Consents. No consent, approval, qualification, order or authorization of, or filing with, any local, state or federal governmental authority is required on the part of the Company in connection with the Company's valid execution, delivery or performance of this Note except any notices required to be filed with the Securities and Exchange Commission under Regulation D of the Securities Act of 1933, as amended (the "1933 Act"), or such filings as may be required under applicable state securities laws, which, if applicable, will be timely filed within the applicable periods therefor.

(c) No Violation. The execution, delivery and performance by the Company of this Note and the consummation of the transactions contemplated hereby will not result in a violation of its Certificate of Incorporation or Bylaws, in any material respect of any provision of any mortgage, agreement, instrument or contract to which it is a party or by which it is bound or, to the best of its knowledge, of any federal or state judgment, order, writ, decree, statute, rule or regulation applicable to the Company or be in material conflict with or constitute, with or without the passage of time or giving of notice, either a material default under any such provision or an event that results in the creation of any material lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to the Company, its business or operations, or any of its assets or properties.

5. Representations and Covenants of the Holder. The Company has entered into this Note in reliance upon the following representations and covenants of the Holder:

(a) Investment Purpose. This Note and the Common Stock issuable upon conversion of the Note are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

(b) Private Issue. The Holder understands (i) that this Note and the Common Stock issuable upon conversion of this Note are not registered under the 1933 Act or qualified under applicable state securities laws, and (ii) that the Company is relying on an exemption from registration predicated on the representations set forth in this Section 8.

(c) Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

(d) Risk of No Registration. The Holder understands that if the Company does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell the Common Stock issuable upon conversion of the Note, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of the Note or the Common Stock which might be made by it in reliance upon Rule 144 under the 1933 Act may be made only in accordance with the terms and conditions of that Rule.

6. Assignment. Subject to the restrictions on transfer described in Section 9 below, the rights and obligations of the Company and the Holder shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of the Company and the Holder.

8. Transfer of This Note or Securities Issuable on Conversion Hereof. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, the Holder will give written notice to the Company prior thereto, describing briefly the manner thereof. Unless the Company reasonably determines that such transfer would violate applicable securities laws, or that such transfer would adversely affect the Company's ability to account for future transactions to which it is a party as a pooling of interests, and notifies the Holder thereof within five (5) business days after receiving notice of the transfer, the Holder may effect such transfer. The Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance with the 1933 Act, unless in the opinion of counsel for the Company such legend is not required in order to ensure compliance with the 1933 Act. The Company may issue stop transfer instructions to its transfer agent in connection with such restrictions.

9. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon delivery if personally delivered or three (3) business days after deposit if deposited in the United States mail for mailing by certified mail, postage prepaid, and addressed as follows:

If to Investor:	Robert Gasich 429 W. Ohio Street #127 Chicago, IL 60610
If to Company:	Zenergy International, Inc. 429 W. Ohio Street #127 Chicago, IL 60610

Each of the above addressees may change its address for purposes of this Section by giving to the other addressee notice of such new address in conformance with this Section.

10. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of Nevada, without regard to the conflicts of laws provisions thereof.

11. Heading; References. All headings used herein are used for convenience only and shall not be used to construe or interpret this Note. Except as otherwise indicated, all references herein to Sections refer to Sections hereof.

12. Waiver by the Company. The Company hereby waives demand, notice, presentment, protest and notice of dishonor.

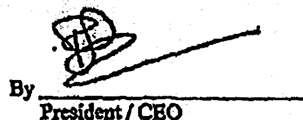
13. Delays. No delay by the Holder in exercising any power or right hereunder shall operate as a waiver of any power or right.

14. Severability. If one or more provisions of this Note are held to be unenforceable under applicable law, such provision shall be excluded from this Note and the balance of the Note shall be interpreted as if such provision was so excluded and shall be enforceable in accordance with its terms.

15. No Impairment. The Company will not, by any voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Note and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder of this Note against impairment.

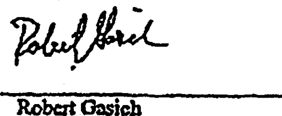
IN WITNESS WHEREOF, Zenergy International, Inc. has caused this Note to be executed in its corporate name and this Note to be dated, issued and delivered, all on the date first above written.

Zenergy International, Inc.



By____________________
President / CEO

HOLDER



____
Robert Gasich

PARADIGM TACTICAL PRODUCTS INC.

CONSENT RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY

WHEREAS pursuant to the provisions of Section 78.315 of the Nevada Revised Statutes, Chapter 78, as amended (the "*Act*"), and the Articles of Incorporation and By-Laws of Paradigm Tactical Products, Inc., a Delaware corporation (the "Company"), the undersigned, being the sole director of the Company and constituting the Board of Directors of the Company, hereby consents to, votes in favor of and adopts the following consent resolutions of the Board of Directors. Such Board of Directors by his signature hereto does hereby waive any and all requirements for the giving of notice for and of the convening of a formal meeting of the Board of Directors;

AND WHEREAS the Board of Directors of the Company has been engaged in discussions and negotiations regarding acquisition of all of the issued and outstanding shares of common stock of Zenergy International, Inc., a private company organized under the laws of the State of Nevada ("Zenergy"), assumption of certain liabilities, including the $30,000 debt due and owing by Zenergy to Robert Gasich (the "Debt") as evidenced by that certain convertible note in the principal amount of $30,000.00 dated April 7, 2008 between Zenergy and Robert Gasich (the "Convertible Note");

AND WHEREAS the Board of Directors has determined that the a share exchange agreement is the most beneficial structure to consummate such a transaction and each shareholder of Zenergy (the "Zenergy Shareholders") will receive one share of restricted common stock of the Company for every 1/7th share of .14285714 shares held of record in Zenergy;

AND WHEREAS the Board of Directors has received that certain share exchange agreement dated May 28, 2009 among the Company, Zenergy and the Zenergy Shareholders (the "Share Exchange Agreement"), which provides for the transaction described above; therefore,

THE FOLLOWING CONSENT RESOLUTIONS of the Directors of the Corporation were approved by the Directors of the Company effective as of the 5th day of June, 2009 (the "Effective Date" herein).

NOW THEREFORE BE IT RESOLVED THAT:

Approval and Ratification of the Share Exchange Agreement

1. The execution and consummation of the Share Exchange Agreement among the Company, Zenergy and the Zenergy Shareholders be and hereby is approved and ratified in all respects.

2. The Company be and hereby is authorized to assume the Debt and any other liabilities as set forth in the terms and provisions of the Share Exchange Agreement, and is further authorized to comply with the terms and provisions of the Convertible Note.

3. The Company be and hereby is authorized to issue an aggregate 216,232,100 shares of its common stock to the Zenergy Shareholders, and that the issuance of the 216,232,100 shares of its common stock to the Zenergy Shareholders in accordance with the terms and provisions of the Share Exchange Agreement shall be validly issued and fully paid and non-assessable effective as of May 28, 2009.

4. The issuance of the 216,232,100 shares of common stock to the Zenergy Shareholders are issued pursuant to Section 4(2) and Regulation S of the Securities Act of 1933, as amended (the "Securities Act").

5. The issuance of the 216,232,100 shares of common stock to the Zenergy Shareholders will not be registered under the Securities Act, that such shares of common stock may be offered, sold or otherwise transferred only after presentation to the Company of an opinion of counsel, satisfactory to the Company that the transfer will not violate the Securities Act or any applicable state laws, and that stock certificates for issuance of the shares of common stock of the Company shall bear a legend setting forth the restrictions on transfer of stock set forth below:

> "The securities represented by this stock certificate have not been registered under the Securities Act of 1933, as amended (the "Securities Act") or applicable state securities laws, and shall not be sold, pledged, hypothecated, donated, or otherwise transferred (whether or not for consideration) by the holder except upon the issuance to the Company of a favorable opinion of its counsel or the submission to the Company of such other evidence as may be satisfactory to counsel for the Company, to the effect that any such transfer shall not be in violation of the Securities Act or applicable state securities laws."

<u>Ratification of general matters</u>

6. <u>Ratification of authority</u>. Any one Director of the Board of Directors or Executive Officer of the Company be and the same is hereby authorized and directed for and on behalf of the Company to do and perform all acts and things and execute and deliver all documents and take all such other steps as may be necessary or desirable to give full effect to these consent resolutions;

7. <u>Ratification of the corporate seal</u>. The corporate seal of the Company may be affixed to any document provided for in these consent resolutions.

BOARD OF DIRECTORS:

Date: June 8, 2009

Vincent Cammarata

<u>ZENERGY INTERNATIONAL INC.</u>

<u>CONSENT RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY</u>

<u>WHEREAS</u> pursuant to the provisions of Section 78.315 of the Nevada Revised Statutes, Chapter 78, as amended (the "*Act*"), and the Articles of Incorporation and By-Laws of Zenergy International Inc., a Nevada corporation (the "Company"), the undersigned, being the sole director of the Company and constituting the Board of Directors of the Company, hereby consents to, votes in favor of and adopts the following consent resolutions of the Board of Directors. Such Board of Directors by his signature hereto does hereby waive any and all requirements for the giving of notice for and of the convening of a formal meeting of the Board of Directors;

<u>AND WHEREAS</u> the Board of Directors of the Company acknowledges that a debt in the amount of $30,000 was incurred due and owing to Robert Gasich ("Gasich") as of April 7, 2008 (the "Debt"), which Debt has been evidenced by that certain convertible promissory note dated April 7, 2008 in the principal amount of $30,000.00 between the Company and Gasich (the "Convertible Note"), pursuant to which such Debt is convertible into shares of common stock at the conversion rate of $0.0001 per share;

<u>AND WHEREAS</u> the Board of Directors of the Company is considering the consummation of that certain share exchange agreement dated May 28, 2009 (the "Share Exchange Agreement") among the Company, the shareholders of the Company (the "Zenergy Shareholders") and Paradigm Tactical Products, Inc., a Delaware corporation ("Paradigm"), pursuant to which Paradigm is acquiring all of the issued and outstanding shares of common stock held of record by the Paradigm Shareholders in exchange for the issuance of an aggregate 216,232,100 shares of the common stock of Paradigm and assuming the Debt; therefore,

<u>THE FOLLOWING CONSENT RESOLUTIONS</u> of the Directors of the Corporation were approved by the Directors of the Company to be effective as of April 7, 2008 and signed this 9th day of June, 2009 (the "Effective Date" herein).

<u>NOW THEREFORE BE IT RESOLVED THAT:</u>

<u>Approval and Ratification of the Debt</u>

1. The Company be and hereby acknowledges and ratifies as true and accurate the Debt.

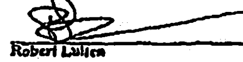
<u>Share Exchange Agreement</u>

2. The Board of Directors hereby ratifies, confirms and approves the execution and consummation of the Share Exchange Agreement.

Ratification of general matters

3. Ratification of authority. Any one Director of the Board of Directors or Executive Officer of the Company be and the same is hereby authorized and directed for and on behalf of the Company to do and perform all acts and things and execute and deliver all documents and take all such other steps as may be necessary or desirable to give full effect to these consent resolutions, including the terms and provisions of the Share Exchange Agreement.

BOARD OF DIRECTORS:



Date: June 9, 2009

Robert Lulien

Assignment of Debt

Robert Gasich ("Assignor")

Skyline Capital Investment, Inc. ("Assignee")

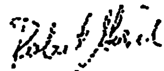
THIS ASSIGNMENT made this 3rd day of June, 2009 by and between Robert Gasich ("Assignor") and Skyline Capital Investment, Inc. ("Assignee")

Witnesseth, that for valuable consideration in hand of significance received "Consulting Services" by the Assignee in support of the Assignor, receipt of which hereby is acknowledged;

The Assignor hereby assigns and transfers to Skyline Capital Investment, Inc. $3,760.00 of assignable debt of Zenergy International, Inc. (successor to Paradigm Tactical Solutions, Inc.), held beneficially and of record by the Assignor.

IN WITNESS WHEREOFF, the Assignor has executed this Assignment on the day and year first above written.

This assignment is without recourse to the Assignee.



Robert Gasich

("Assignor")

Skyline Capital Investment, Inc.

("Assignee")

Notice of Conversion

The undersigned hereby irrevocably elects to convert $3,760.00 into (37,600,000) thirty-seven million six hundred thousand shares of common stock of Zenergy International, Inc. ("Company") according to conditions set forth in such common stock certificate as of the date written below.

If shares are to be issued in the name of a person or entity other than the undersigned, the undersigned will pay all transfer and other taxes and charges payable with respect thereto.

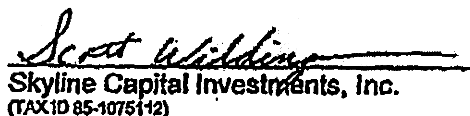
Date of Conversion: June 3, 2009

Applicable Conversion Price: $.0001

Shares are to be registered in the following name:

Name: Skyline Capital Investments, Inc.

Address: 688 NW 156th Ave, Pembroke Pines, Florida 33028



Skyline Capital Investments, Inc.
(TAX ID 85-1075112)

CONSULTING SERVICES AGREEMENT

This AGREEMENT (the "Agreement") made and entered into the 30th day of May, 2009, by Investing In Stock Market, Inc. and along with any corporation, partnership, proprietorship, joint venture, division, subsidiary, employee, consultant, agent, associate, assignees, family member, or any other third party under their direct or indirect control (hereinafter referred to as "Consultants") and Skyline Capital Investment, Inc. Involved (hereinafter referred to as the "Company").

RECITALS

WHEREAS, the Consultant is an independent contractor engaged in the business of investor relations services;

WHEREAS, the Company desires to increase investor awareness for its clients of its common stock;

For and in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1. SERVICES PROVIDED

1.0 The Company hereby agrees to engage Consultants, and Consultants hereby agree to provide the following investor relations services:

(a) Profiles PTPC (Paradigm Tactical Products, Inc. on Consultants' website (www.investinginstockmarket.net)
(b) Daily contact with market participants via optin e-mail, instant messages, conference calls, and posts to investor forums with use of disclaimers
(c) Customers and Shareholders having access to my phone number and email addresses.
(d) Use of Investing In Stock Market, Inc. in PR's under contact us section is approved.

ARTICLE 2. TERM OF ENGAGEMENT

2.0 This Agreement is to be in effect for the period from May 30th, 2009 up to and including July 29th, 2009, and is to be applied to any subsequent renewals or extensions.

ARTICLE 3. PAYMENT FOR SERVICES

3.0 As payment for Investor Relations services, 3,000,000 Free Trading Shares of PTPC (Stock may not be S-8, 504, or affiliate stock)

(a) Payment Instructions
(b) Funds can be wired to:

Stock can be journaled to the following:
ACAP Financial Inc.
Account # 43934430
In the name of: Investing In Stock Market, Inc.

DB
SW

ARTICLE 6. MISCELLANEOUS

6.0 *Notices.* Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be deemed to have been duly given when delivered personally or sent by registered or certified mail, return receipt request, postage prepaid to the parties hereto at their addresses indicated hereinafter. Either party may change his or its address for the purpose of this paragraph by written notice similarly given.

6.1 *Entire Agreement.* This Agreement represents the entire agreement between the Parties in relation to its subject matter and supersedes and voids all prior agreements between such Parties relation to such subject matter.

6.2 *Amendment of Agreement.* This Agreement may be altered or amended, in whole or in part, only in writing signed by both Parties.

6.3 *Waiver.* No waiver of any breach or condition of its Agreement shall be deemed to be a waiver of any other subsequent breach or condition, whether or a like or different nature, unless such shall be signed by the person making such waivers and/or which so provides by its terms.

6.4 *Captions.* The captions appearing in this Agreement are inserted as matter of convenience and for reference and in no way affect this Agreement, define, limit or describe its scope or any of is provisions.

6.5 *State.* This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to the conflict of laws provisions thereof.

6.6 *Benefits; Assignment.* This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors and permitted assigns. This Agreement may not be assigned by either Party without the written consent of the other Party.

6.7 *Counterparts.* This Agreement may be executed in counterpart and by fax transmission, each counterpart being deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written

Skyline Capital Investment, Inc.
Authorized person x [signature] Title President Date 05-30-2009
I hereby certify that I agree to the terms of the consulting agreement above and am authorized to enter into this consulting agreement.

Investing In Stock Market, Inc.
Authorized person x [signature] Title President Date 5-30-09
I hereby certify that I agree to the terms of the consulting agreement above and am authorized to enter into this consulting agreement.

EXHIBIT 20

CONSULTING SERVICES AGREEMENT

This AGREEMENT (the "Agreement") made and entered into the 30th day of May, 2009, by Investing In Stock Market, Inc. and along with any corporation, partnership, proprietorship, joint venture, division, subsidiary, employee, consultant, agent, associate, assignees, family member, or any other third party under their direct or indirect control (hereinafter referred to as "Consultants") and Skyline Capital Investment, Inc. Involved (hereinafter referred to as the "Company").

RECITALS

WHEREAS, the Consultant is an independent contractor engaged in the business of investor relations services;

WHEREAS, the Company desires to increase investor awareness for its clients of its common stock;

For and in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

ARTICLE 1. SERVICES PROVIDED

1.0 The Company hereby agrees to engage Consultants, and Consultants hereby agree to provide the following investor relations services:

(a) Profiles PTPC (Paradigm Tactical Products, Inc. on Consultants' website (www.investinginstockmarket.net)
(b) Daily contact with market participants via optin e-mail, instant messages, conference calls, and posts to investor forums with use of disclaimers
(c) Customers and Shareholders having access to my phone number and email addresses.
(d) Use of Investing In Stock Market, Inc. in PR's under contact us section is approved.

ARTICLE 2. TERM OF ENGAGEMENT

2.0 This Agreement is to be in effect for the period from May 30th, 2009 up to and including July 29th, 2009, and is to be applied to any subsequent renewals or extensions.

ARTICLE 3. PAYMENT FOR SERVICES

3.0 As payment for Investor Relations services, 3,000,000 Free Trading Shares of PTPC (Stock may not be S-8, 504, or affiliate stock)

(a) Payment Instructions
(b) Funds can be wired to:

Stock can be journaled to the following:
ACAP Financial Inc.
Account # 43934430
In the name of: Investing In Stock Market, Inc.

DB
SW

ARTICLE 6. MISCELLANEOUS

6.0 *Notices.* Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be deemed to have been duly given when delivered personally or sent by registered or certified mail, return receipt request, postage prepaid to the parties hereto at their addresses indicated hereinafter. Either party may change his or its address for the purpose of this paragraph by written notice similarly given.

6.1 *Entire Agreement.* This Agreement represents the entire agreement between the Parties in relation to its subject matter and supersedes and voids all prior agreements between such Parties relation to such subject matter.

6.2 *Amendment of Agreement.* This Agreement may be altered or amended, in whole or in part, only in writing signed by both Parties.

6.3 *Waiver.* No waiver of any breach or condition of its Agreement shall be deemed to be a waiver of any other subsequent breach or condition, whether or a like or different nature, unless such shall be signed by the person making such waivers and/or which so provides by its terms.

6.4 *Captions.* The captions appearing in this Agreement are inserted as matter of convenience and for reference and in no way affect this Agreement, define, limit or describe its scope or any of is provisions.

6.5 *State.* This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to the conflict of laws provisions thereof.

6.6 *Benefits; Assignment.* This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors and permitted assigns. This Agreement may not be assigned by either Party without the written consent of the other Party.

6.7 *Counterparts.* This Agreement may be executed in counterpart and by fax transmission, each counterpart being deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written

Skyline Capital Investment, Inc.
Authorized person x [signature] Title President Date 05-30-2009
I hereby certify that I agree to the terms of the consulting agreement above and am authorized to enter into this consulting agreement.

Investing In Stock Market, Inc.
Authorized person x [signature] Title President Date 5-30-09
I hereby certify that I agree to the terms of the consulting agreement above and am authorized to enter into this consulting agreement.

EXHIBIT 21

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. C-07707-A

ZENERGY INTERNATIONAL, INC.)

WITNESS: Scott Wilding

PAGES: 1 through 202

PLACE: 801 Brickell Avenue

Suite 1800

Miami, Florida 33131

DATE: Thursday, September 1, 2011

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.

SECURITIES & EXCHANGE COMMISSION
RECEIVED

CHICAGO REGIONAL OFFICE

Page 138

1 A It's about using Dale's services.
2 Q Did you enter into an agreement with Dale
3 to use his services to profile Zenergy?
4 A It basically states that, yes.
5 Q On the third page is that your signature?
6 A Yes.
7 Q You don't recall asking Dale to sign this
8 document on your behalf?
9 A I don't know why I said those in the
10 e-mail, it must have -- I mean, honestly, if
11 somebody signed my name so be it because I didn't
12 have a scanner, but I think that's what happened.
13 My scanner broke or something like that a couple
14 of times, maybe I asked him to help me out because
15 I couldn't send the documents out.
16 Q Whether or not that's your signature, do
17 you recall entering into an agreement with Dale
18 for marketing services?
19 A Absolutely.
20 Q I'm going to hand you a document that's
21 previously been introduced as Zenergy Exhibit 111.
22 It's a opinion letter from Diane Dalmy to Wilson
23 Davis at Pacific Stock Transfer dated August 26,
24 2009, together with attachments, the last
25 attachment is a consulting services agreement

Page 139

1 between Skyline Capital Investment stock market
2 dated 30th May 2009. There are a lot of documents
3 here so feel free to take a minute.
4 A This is a legal opinion from Diane Dalmy
5 to Wilson Davis, a brokerage firm.
6 Q It looks to me it's on behalf of Dale
7 Baeten.
8 A I think everybody got one so I'm pretty
9 sure. Whoever got shares needed a legal opinion
10 from Diane Dalmy.
11 Q She supplied opinion letters for multiple
12 individuals?
13 A For everybody that received stock, yes.
14 Based on stock purchase agreements, the debt, the
15 assignments.
16 Q If you look at the first paragraph here
17 on the first page that second sentence says, this
18 opinion is written in connection with the issuance
19 of shares certificate to investing in stock market
20 in the aggregate denomination three million shares
21 of common stocks. Investing in Stock Market, is
22 that Dale Baeten's corporation?
23 A Yes.
24 Q This is an opinion letter on behalf of
25 Dale. Do you remember Diane talking to you about

Page 140

1 an opinion letter on behalf of Dale?
2 A Everybody gets one so I never talked to
3 Diane specifically on anybody's opinion.
4 Q She never approached you to ask about
5 your transaction with Dale?
6 A No.
7 Q Okay. Did she ever ask you any questions
8 about your consulting services agreement with
9 Dale?
10 A No.
11 Q Did you ever discuss gifting shares to
12 Dale Baeten?
13 A No.
14 Q On the second page of the opinion letter
15 near the very bottom Diane says, lastly, effective
16 August 7, 2009, Skyline Capital gifted three
17 million shares of common stock of the company --
18 A I don't know about the word gifted.
19 Q So you don't remember gifting shares?
20 A No. I mean, she used the word gifted, I
21 never read it. Where does it say gifted? Here it
22 is.
23 Q Then if you go to the third page where
24 you see the numbered items there, number seven,
25 Diane said she's examined the following, and

Page 141

1 item seven in that list is the acknowledgment of
2 gifted shares dated August 7, 2009, signed by
3 representatives.
4 A I didn't write this so I have no comment.
5 Q Did you ever provide her an
6 acknowledgment of gift of shares?
7 A No.
8 Q Did you ever acknowledge a gift of
9 shares?
10 A No.
11 Q It says a representative of Skyline,
12 could there be any other representative of Skyline
13 other than you?
14 A No. I only gift shares to one person and
15 that's myself.
16 Q Okay. The very last document in this set
17 of Zenergy Exhibit 111 is another consulting
18 services agreement. And if you look it's actually
19 a different date than the other one we just looked
20 at.
21 A We just went through this.
22 Q This is a very similar agreement. I
23 guess my question is if you look at Zenergy
24 Exhibit 107 which is also a consulting services
25 agreement, looks very similar, it's for three

Page 142

1 million shares, et cetera, it actually has a
2 different date on it, one is August 7, 2009, and
3 the other is May 30, 2009.
4 Did you enter into two separate
5 agreements with Dale?
6 A No, there is one.
7 Q Do you know why there are two different
8 dates there?
9 A No.
10 Q On the third page or the second page --
11 A There was one transaction.
12 Q On the last page of Zenergy Exhibit 111,
13 is that your signature at the bottom?
14 A Yes.
15 Q So do you remember signing two separate
16 agreements, or entering into two separate
17 agreements?
18 A No, no. Maybe just the date's changed.
19 One agreement and maybe just the date changed so
20 we had to revise it, I'm not sure. But I never --
21 I'm a hundred percent sure there was one
22 agreement.
23 (SEC No. 258 was marked for
24 identification.)
25 Q Okay. Let me show you a one page

Page 143

1 document I'm marking Zenergy Exhibit 258. It's a
2 check from Skyline Capital Ronald Martino drawn on
3 Bank of America account for $15 thousand.
4 A Right.
5 Q Dated August 30, 2009. Do you remember
6 sending Mr. Martino $15 thousand, writing him a
7 check?
8 A I guess I did.
9 Q Why were you sending Mr. Martino $15
10 thousand?
11 A No idea.
12 Q Was this to repay him for services
13 rendered with respect to Zenergy?
14 A Nope, I don't remember.
15 Q Was it to pay him for promoting stock?
16 A Nope, I don't remember. I think I loaned
17 him money.
18 Q Okay.
19 A I honestly don't remember.
20 (SEC No. 259 was marked for
21 identification.)
22 Q Let me show you a document I'm marking
23 Zenergy Exhibit 259, it's a wire transfer detail
24 from Bank of America. Five pages back. It's a
25 little tricky to read but I think I can show you

Page 144

1 the numbers that matter.
2 So the amount toward the top here say $75
3 thousand. The send date you have to read a little
4 backwards, it's 09/09/14, that's September 14,
5 2009. Debit info is Skyline Capital. And then
6 credit is going to Downshire Capital. So what
7 this wire transaction detail suggests that Skyline
8 Capital sent Downshire Capital $75 thousand on
9 September 14, 2009. Do you remember sending
10 Downshire Capital 75 thousand?
11 A Yes.
12 Q What was that for?
13 A I don't remember.
14 Q What was the source of the $75 thousand?
15 A What was the source?
16 Q Yes. Where did you get the money?
17 A I guess the sale of stock of something,
18 that's how I get all my money.
19 Q Was it the sale of Zenergy stock?
20 A Yes, had to have been, I was broke before
21 then.
22 Q So did you just say you don't
23 remember what you --
24 A I don't remember what this was for. You
25 would have to go back to the date and ask Dan, I

Page 145

1 just don't remember.
2 Q I'm going to show you an e-mail chain
3 previously marked Zenergy Exhibit 115, it's one
4 page, top of which is an e-mail to you from Dale
5 Baeten on September 17, 2009.
6 So if you look here at the bottom e-mail
7 chain Mr. Bennett e-mails you on September 17th
8 that, oh well, they still turn me down without an
9 explanation that makes six brokers to turn my
10 shares down, and then your response, send shares
11 back to the TA and have them reissue them back in
12 Skyline Capital Investments, Inc., name and I will
13 sell them for you. Then you forward that on to
14 Dale.
15 First, did you think it was unusual that
16 he had six brokers that turned down his attempts
17 to clear the shares?
18 A Like I said, the brokerage firms are
19 refusing to accept stock. Whether it's a legal
20 opinion, whether everything is good or not it's
21 their discretion whether to accept the shares or
22 not. You would have to speak to those brokerage
23 firms compliance departments and the attorneys
24 that work for them and ask them why they refuse to
25 accept shares, I have no idea.

EXHIBIT 22

Message

From: Diane Dalmy[
Sent: 12/17/2009 8:53:41 PM
To: 'Vincent Cammarata'
Subject: RE: opinion

Vinny – you have NO idea regarding the state of affairs in the industry involving FINRA and SEC. I am not going to write an opinion until I am satisfied that there are absolutely no issues regarding this company. I am not going to risk my license. I am reviewing everything. And no – it won't take me 5 minutes. It will take me an hour to prepare and then be bombarded with questions and requests for documentation from brokers and lawyers of brokerage firms, etc. I need to make sure that all is in order – and I am not sure it is.

Diane

From: Vincent Cammarata [mailto:
Sent: Thursday, December 17, 2009 12:47 PM
To:
Subject: Re: opinion

Diane
Come on this is getting so ridiculous it will take you 5 freeking minutes This is killing me
Vinnie

From: <
To: Vincent Cammarata <vcamm4@yahoo.com>
Sent: Tue, December 15, 2009 10:31:35 PM
Subject: Re: opinion

Vinny. This is killing me. I will. But I need to explain to you tomorrow.
------Original Message------
From: Vincent Cammarata
To:
Subject: RE: opinion
Sent: Dec 15, 2009 8:06 PM

i cant beleiv you arent i am really discusted and pissed i asked for nothing ive been begging for months and i am owe this this is bullsshit i hope you atleat have the descency to finalize 1 request and get me what i am owed you promised you should reconsider and you wont hear from me again
-----Original Message-----
Date: Tuesday, December 15, 2009 8:56:27 pm
To: "'Vincent Cammarata'" <>
Subject: RE: opinion
From: "Diane Dalmy" <d

Vinnie - right now, I am not providing ANY Rule 144 opinion letters. I am sorry -- you have no idea what is going on in the industry right now and over the past two weeks I have made this decision.

Exhibit
Exhibit No.: 49
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

Diane

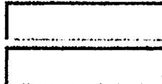
From: Vincent Cammarata [mailto:[REDACTED]
Sent: Tuesday, December 15, 2009 12:01 PM
To: [REDACTED]
Subject: opinion

Diane

Please get me out of your hair and get me the opinion letter you promised
for the 13 million shares of VLC HOLDINGS LLC AND I WILL NEVER BOTHER YOU
AGAIN
VINNIE

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.427 / Virus Database: 270.14.108/2566 - Release Date: 12/15/09
07:52:00

Sent from my Verizon Wireless BlackBerry



No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.427 / Virus Database: 270.14.111/2570 - Release Date: 12/17/09 08:30:00

EXHIBIT 23

DIANE D. DALMY
ATTORNEY AT LAW
8965 W. CORNELL PLACE
LAKEWOOD, COLORADO 80227
303.985.9324 (telephone)
303.988.6954 (facsimile)
email: [redacted]

December 28, 2009

Pacific Stock Transfer Inc.
500 E. Warm Springs Road
Suite 240
Las Vegas, Nevada

Re: Rule 144(b) Sale of Shares of Common Stock
of Zenergy Holdings Inc.

To Whom It May Concern:

I have acted as special counsel to Zenergy Holdings Inc., formerly known as Paradigm Tactical Products Inc., a corporation organized under the laws of the State of Delaware (the "Corporation"). This opinion is written in connection with the settlement of debt in the amount of $30,000.00 (the "Zenergy Debt") between Zenergy Inc., a corporation organized under the laws of the State of Nevada ("Zenergy") and Robert Gasich ("Gasich"). The Zenergy Debt is evidenced by and reflected in the financial statements of Zenergy as of April 17, 2008. As at April 17, 2008, Zenergy and Gasich verbally agreed and established that the Zenergy Debt could be convertible at Gasich's sole option into shares of common stock of Zenergy at $0.0001 per share.

Subsequently, the Corporation, Zenergy and the shareholders of Zenergy (the "Zenergy Shareholders") entered into that certain share exchange agreement dated May 28, 2009 (the "Share Exchange Agreement"), pursuant to which the Corporation agreed to acquire one hundred percent of the total issued and outstanding shares of common stock of Zenergy in exchange for the issuance of 216,232,100 shares of the restricted common stock of the Corporation and to further assume the Zenergy Debt and issue shares of its common stock as settlement of the Zenergy Debt.

Plaintiff's Exhibit
Exhibit No.: 50
Name: Diane Dalmy
Date: 6-10-14
ESQUIRE

Pacific Stock Transfer Inc.
Page Two
December 28, 2009

In further accordance with the terms and provisions of those certain partial assignments of the Zenergy Debt dated effective June 1, 2009 (the "Partial Assignment of Zenergy Debt"), between Gasich and VLC Holdings LLC (the "Assignee"), Gasich assigned a pro-rata portion of his right, title and interest in and to the Zenergy Debt to the Assignee in the amount of $1,300.00.

In accordance with the subsequent receipt of notice of conversion dated June 3, 2009 from the Assignee (the "Notice of Conversion") and settlement of the Debt by issuance of an aggregate of 13,000,000 shares of Common Stock of the Corporation to the Assignee, I am of the opinion that: (i) September 18, 2009, the restrictive legend may be removed from the share certificate to be issued to the Assignee; and (ii) the shares of common stock may be sold by the Assignee free of any restrictions on transfer without registration under the Securities Act of 1933, as amended (the "Act") pursuant to Rule 144(b) of the Act.

In connection with this opinion, I have examined the following:

1. Board of Director Resolutions of Zenergy dated June 2, 2009 effective June 1, 2006 ratifying and acknowledging the terms and provisions of the Zenergy Debt (the "Zenergy Board Resolutions").

2. Board of Director Resolutions of the Corporation dated June 3, 2009: (i) ratifying and acknowledging the terms and provisions of the Zenergy Debt; (ii) approving the assumption of the Zenergy Debt; (iii) acknowledging the Partial Assignment of Zenergy Debt; (iv) acknowledging receipt of the Notices of Conversion from the Assignees; and (v) approving the issuance of the aggregate 274,000,000 shares of common stock to the Assignees (which includes this Assignee herein).

3. Share Exchange Agreement.

4. The Partial Assignment of Zenergy Debt.

5. The Notice of Conversion.

Confidential Treatment Requested by Pacific Stock Transfer
Zenergy International, Inc. C-07707-00688

6. Certificate of Amendment to Certificate of Incorporation as filed with the Delaware Secretary of State on June 1, 2009 changing the par value of the Corporation's shares of common stock to $0.0001.

I have also investigated such other matters and examined such other documents as I have deemed necessary in connection with the rendering of this opinion. In examining these documents, I have assumed the genuineness of the signatures not witnessed, the authenticity of documents submitted as originals, and the conformity to originals of documents submitted as copies. This opinion is based solely on the facts and assumptions as set forth in this opinion and is limited to the investigation and examinations and such other investigation as I deemed necessary.

Based on the information provided and on my examination of the documents previously discussed, I find as follows:

1. The issuance of the aggregate 13,000,000 shares of common stock of the Corporation to the Assignees will be acquired by the Assignee from the Corporation in a private transaction pursuant to the terms of the Share Exchange Agreement, the Zenergy Debt and the Partial Assignment of Zenergy Debt. At the date of the Zenergy Debt, full consideration was given and received and the shares were deemed fully paid and non-assessable.

2. In accordance with the terms and provisions of the Partial Assignment of Zenergy Debt, Gasich assigned a portion of his right, title and interest in and to the Zenergy Debt proportionately to the Assignee.

3. The Assignee shall be deemed to have held the shares of common stock for in excess of one (1) year from the date of April 17, 2008 as established by the Zenergy Debt based upon the revised Rule 144 effective February 15, 2008. However, the Assignee was deemed an affiliate of the Company until September 18, 2009.

Pacific Stock Transfer Inc.
Page Four
December 28, 2009

4. The Assignee is currently not nor has been during the preceding three months an affiliate of the Corporation as that term is defined by Rule 144. The Assignee is not an officer or director of the Corporation nor a party in any manner of contract with the Corporation that would suggest a controlled relationship and the Assignee shall not be considered an underwriter with respect to the shares within the meaning of Section 2(11) of the Act. The Assignee is not under control of either the Corporation or any of its officers and directors.

5. The Corporation is not and has not been a shell corporation as defined in Rule 230.405 of the Securities Act.

Based on the above, I am of the opinion that: (i) as of September 18, 2009, the restrictive legend may be removed from the share certificate to be issued to the Assignee representing in the aggregate the 13,000,000 shares of common stock of the Corporation; (ii) as of September 18, 2009, the requirements of Rule 144(b) have been met and the sale of the shares of common stock of the Corporation to be evidenced by the share certificates to be issued to the Assignee will be exempt from the registration requirements of the Act under the exemption set forth in Rule 144(b); and (iii) the shares of common stock may be subsequently sold or transferred by the Assignee free of any restrictions on transfer.

Accordingly, you are instructed to issue the share certificates to the Assignee in the denominations reflected below representing in the aggregate 13,000,000 shares of common stock without the restrictive legend thereon.

The Corporation, Pacific Stock Transfer Inc., any broker-dealer, any clearing firm and the Assignee are authorized to present this letter and to rely on this opinion in selling the shares of common stock and in registering transfer thereof. No other use of this opinion is authorized.

Sincerely,

Diane D. Dalmy

EXHIBIT 24

UNITED STATES DISTRCIT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SECURITES AND EXCHANGE COMMISSION, Plaintiff, v. ZENERGY INTERNAITONAL, INC., et al., Defendants.	Civil Action No. 1:13-cv-5511

DEFENDANT DIANE DALMY'S RESPONSE TO MOTION FOR REMEDIES

Defendant Diane D. Dalmy ("Dalmy"), through her attorneys, hereby submits her response to Plaintiff Securities and Exchange Commission's ("SEC") motion for remedies, as follows:

INTRODUCTION

Dalmy inadvertently violated the registration provisions of the securities laws when she allowed certain shares of her client, Zenergy, to be sold without registration. Though she acted in good faith, Dalmy understands her actions will result in a heavy cost to her and does not dispute that she should pay disgorgement and a civil penalty. An injunction and penny-stock bar are unwarranted. Such severe sanctions would lead to a draconian result—the end of Dalmy's career. The professional reputation of Dalmy, a sole practitioner and single mother, already has suffered, impairing her ability to support herself and her [redacted] daughter. She should not lose her career altogether. This Court should impose only disgorgement and a reasonable civil penalty.

DISCUSSION OF FACTS

To convince this Court to impose severe penalties against Dalmy, the SEC exaggerates her history, her scienter, her involvement and the impact of her activities on the marketplace.

While Section 5 of the Securities Act of 1933 is part of the federal securities laws, violations that do not entail fraud do not typically merit an SEC Enforcement case. It is rare that the SEC will bring a Section 5 case unless it also brings a more significant case, usually including fraud, that it already plans to bring. In this case, other individuals and entities were involved in a fraudulent pump-and-dump scheme involving Zenergy shares. Dalmy had no involvement with that scheme and it is doubtful that the SEC would have brought its case against Dalmy were it not already charging the pump-and-dump actors with fraud. This Court should decline to impose unreasonable penalties that would destroy her career and imperil her family's livelihood.

1. Dalmy did not act with scienter.

To create the appearance of scienter, the SEC mischaracterizes the facts. Dalmy did not act with scienter. She made a good faith mistake.

a. *The evidence did not clearly indicate to Dalmy that Gasich was an affiliate.*

Dalmy was clear with everyone associated with the transaction that for the Zenergy shares to be freely tradeable without registration, the debt that was going to be converted into the stock at issue could not belong to a Zenergy affiliate. (Dalmy Dep. p. 169, 7-23, attached as "Exhibit A.") Dalmy, in good faith, determined that Gasich, who possessed the debt, was not a Zenergy affiliate.

The SEC relies on certain emails in support of its contention that Dalmy knew Gasich was a Zenergy affiliate. However, those emails reveal only part of the story. Dalmy was aware of the affiliate debt issue and sought to confirm whether the shares at issue involved such debt. Dalmy reviewed and considered the evidence and was persuaded that Gasich, whom she knew was not an officer or director, was not otherwise an "affiliate." Dalmy followed up directly with Gasich specifically because of the emails the SEC cites in order to determine whether he was an affiliate. (Ex. A, pp. 162, 20-24; 163, 1-5; 178, 13-19.) Gasich assured Dalmy that he was not a Zenergy

shareholder. (*Id.*) There is also an email the SEC does not mention where Gasich confirms, this time in writing, that he is neither an affiliate or control person. (Email attached as "Exhibit B.")

To further explore the issue, Dalmy reviewed the Zenergy shareholder list confirming Gasich was not a shareholder. (Ex. A, pp. 162, 8-13; 179, 11-13.) Believing that Gasich was not an officer or director, was not a shareholder, and relying on his oral and written representations, Dalmy determined that he was not an affiliate. (Ex. A, pp. 162, 3-13; 170, 17-30.)

If Dalmy was wrong about Gasich's affiliate status it is because he mislead her. Communications reflecting that Gasich was or was not a Zenergy affiliate show his status was unclear. Dalmy's ultimate determination was at most negligent. "If a securities lawyer is to bring his best independent judgment to bear on a disclosure problem, he must have the freedom to make innocent—or even, in certain cases, careless—mistakes without fear of legal liability or loss of the ability to practice before the Commission." *In the Matter of William R. Carter & Charles J. Johnson,* 47 SEC 471 (SEC Release No. Feb. 28, 1981) (Order Dismissing Proceedings).

b. ***Dalmy did not know about Gasich's interest in Spire.***

As discussed above, Gasich was not on the Zenergy shareholder list. The SEC contends that Gasich had indirect control of Zenergy due to his alleged interest in The Spire Group ("Spire"), a large Zenergy shareholder. While that might be true, his interest was never revealed to Dalmy. (Dalmy Test., pp. 125, 18-23, 126, 11-23, attached as "Exhibit C.") There is no evidence that Dalmy knew, or was reckless, regarding Gasich's involvement with Spire.

c. ***Dalmy did not believe Gasich controlled Zenergy.***

The SEC claims that Gasich controlled Zenergy. Any such control, however, was unknown to Dalmy. Dalmy reasonably believed that Gasich was a Zenergy consultant. (Ex. A, p. 196, 19-24.) Gasich repeatedly conveyed to her that someone else, Robert Luiten ("Luiten"), controlled

Zenergy. Dalmy understood that Gasich was merely Luiten's representative, and had to obtain Luiten's approval for matters relating to Zenergy. As Dalmy testified:

> Bob Gasich was the holder of the debt. And otherwise, his role seemed to be, again, representative of Mr. Luiten, because anytime I had a question, he would always say "I'll run that by Mr. Luiten."

(Ex. C, p. 51, 2-6.)

d. ***Dalmy conducted due diligence regarding Zenergy's shell company status.***

Had Dalmy acted with scienter, she would not have spent the time and effort to conduct due diligence to determine whether registration was necessary. In addition to asking Gasich and others for example, a June 7, 2009 email from Dalmy reflects her efforts to determine whether Paradigm, the company that merged with Zenergy, was ever a shell company, as it would impact her opinion regarding registration, stating:

> I have one concern regarding these Rule 144(b) opinion letters and that is whether Paradigm was EVER or is now a shell. I asked Vinny [the CEO] this a couple of months ago – and he said no, it's always been an operational company. If so, we are fine. [...] Rule 144 is not available to any company that was a shell. And I know I mentioned this at the very beginning of all these discussions re convertible debt.

(6/7/2009 email from Dalmy to Scott Wilding, attached as "Exhibit D.")

Had Dalmy acted with scienter, she would not have explored legal issues relating to Paradigm. She would simply have issued her opinion without the due diligence. Conducting due diligence on the transaction shows Dalmy tried to get it right. She did not act with scienter.

e. ***The SEC implicitly acknowledges Dalmy did not act with scienter.***

Had there been real evidence that Dalmy acted with scienter, the SEC would have charged her with a fraud-based claim, as it did against other defendants in this case, namely Zenergy, Gasich and Luiten. The fact that the SEC did not charge Dalmy with scienter-based claims shows that the SEC itself does not believe there is evidence to support such claims against her.

The SEC may argue it found evidence of scienter after it filed its claims. Were that true, the SEC could have amended its complaint to include a scienter-based claim against Dalmy, something it does in other cases where additional evidence is revealed. The fact that the SEC never charged Dalmy with a scienter-based claim demonstrates that the SEC itself does not believe it could prove that Dalmy acted with scienter.

f. ***The SEC improperly uses language designed to imply scienter.***

The SEC uses incendiary language to prejudice this Court against Dalmy. For example, it cites to the phrase "false attorney opinion letters" in this Court's summary judgment order. Yet this Court never used that phrase. Regardless, there is a difference between writing mistaken letters in good faith, and knowingly writing false letters. Dalmy made an assessment that turned out to be incorrect. She did not knowingly or recklessly distribute false opinion letters.

Similarly, the SEC seeks to prejudice this Court against Dalmy by describing her as a "scheme participant," as if she knowingly participated in the "pump-and-dump" scheme engaged by the others whom the SEC charged with fraud. The SEC, however, did not charge Dalmy as part of that scheme for a reason—she is not culpable for any fraudulent acts.

The SEC implies Dalmy is deceitful by asserting, for example, that while Dalmy "refused to concede the authenticity" of her web page in this case, she was "forced to admit the page was authentic" in another proceeding. (SEC Memo, p. 3, n. 3.) That is false. Through counsel, Dalmy simply objected to the admissibility of her web page because the SEC never authenticated it. Had

it done so, she would not have objected. Similarly, it is absurd to claim that Dalmy was "forced to admit the page was authentic" in another proceeding. The actual transcript states as follows:

SEC: Do you recognize this?

Dalmy: This is from my website.

(Ex. 10 to SEC Memo, p. 16,)

Dalmy was not hiding anything from this Court and nobody "forced" her to admit anything.

2. Dalmy's actions did not cause harm to investors.

Dalmy had no knowledge of the pump-and-dump scheme. Seeking increased remedies, the SEC improperly conflates Dalmy's action—opining on registration—with the pump-and-dump scheme pursuant to which it charged other actors. The SEC, however, did not charge Dalmy with participation in the pump-and-dump scheme. Nor did it charge Dalmy with aiding and abetting or causing the fraud. Instead, it charged Dalmy with a non-scienter based violation of Section 5. Had Dalmy acted with scienter, the SEC would have charged her with it.

Dalmy's violation was opining in good faith that the shares at issue could be traded without registration when, in fact, those shares were not exempt from registration. Her opinions did not inexorably lead to the pump-and-dump scheme. Had Dalmy not issued her opinion, Zenergy could have registered the shares and sold them publicly. Or, as an alternative, Zenergy could have waited for the one-year affiliate waiting period to pass and then sell the shares without registration.[1] Either way, Zenergy shares would have been traded and those perpetuating the pump-and-dump would still have been able to execute their scheme.

The SEC may respond that selling the shares via registration would have come at an increased cost. That might be true, but the market is filled with tiny companies that register their

[1] This alternative assumes that the entities would not be considered "shells" pursuant to Rule 144. This Court did not resolve that issue. But even if this Court did determine the entities were "shells," the first alternative of registering the shares remains viable.

shares. Additionally, any claim that Zenergy would not, or could not, have filed a registration statement would be pure speculation. Zenergy shares were the subject of a pump-and-dump scheme perpetrated by actors (not Dalmy) who put false information into the market to artificially increase demand. There is no evidencc to support the claim that anything in a registration statement would have tempered that demand. Zenergy was a public company whose shares traded well before—and well after—the shares at issue wcre sold. Registration was irrelevant.

Even if the shares at issue never traded, the amount of Zenergy shares already in the market served as ample fodder for the pump-and-dump scheme. Therefore, the SEC cannot claim that "Dalmy was indispensable to the scheme."

Additionally, there is scant evidence of harm to any innocent investors relating to the shares sold subject to Dalmy's opinion. Zenergy was a public company bcfore and after the time period when the shares at issue were sold. Investors traded Zenergy shares, both during and well outside the time period the shares at issue were sold. (Dalmy's Resp. to SEC's Stmt. Fact No. 75, Dkt. No. 76; Ex. 95 to SEC's Stmt. of Fact, Dkt. 66-11, attached as "Exhibit E.") There is no evidence indicating who the purchasers were or whether they actually were harmed. They could have been part of the pump-and-dump scheme with the hopes of seeing the stock price increase even further. There is also no evidence showing when, or if, the buyers sold the shares or what their cost basis was. After the shares at issue were sold, they could have been resold without any losses to the buyers. It simply cannot be surmised that innocent investors were harmed.

3. The SEC exaggerates Dalmy's history.

No state or federal court has found Dalmy to have engaged in wrongdoing. Nor has Dalmy ever settled securities violation allegations. Instead, the SEC points to an arbitrary determination by OTC Markets, which has "no financial standards or reporting requirements,"[2] and an initial decision

[2] Microcap Stock: A Guide for Investors, https://www.sec.gov/investor/pubs/microcapstock.htm

by an SEC in-house court. The OTC determination, which was based on two pieces of mistaken correspondence, afforded her no due process whatsoever. There was no hearing, testimony, or discovery. Instead, the private organization came to its own determination on its own terms.

Next, the SEC points to a case it brought against Dalmy in an in-house court. As an initial matter, the decision the SEC cites is not a final decision. The order states specifically that "[t]he Initial Decision will not become final until the Commission enters an order of finality." (Ex. 9 to SEC Memo, at 30.) The order noted that Dalmy may seek review of the initial decision which will prevent the order of finality. (*Id.*) In that case, Dalmy filed a petition for review, which was granted. (SEC Order, attached as "Exhibit F.") Therefore, the decision is not final. Even if the decision becomes final, it lacks the import of a state or federal court finding because an SEC in-house court lacks due process, making it fundamentally unfair. Indeed, courts have found that SEC administrative proceedings lack procedural safeguards. *Duka v. U.S. SEC*, 15 CIV. 357 RMB SN, 2015 WL 5547463, at *13 (S.D.N.Y. Sept. 17, 2015). Many believe the SEC's in-house system of ALJ's, who rule in favor of the SEC more than 90% of the time,[3] is unduly biased toward the SEC. *SEC Faces New Attack on In-House Judges,* WSJ, Oct. 21, 2015, http://blogs.wsj.com/moneybeat/2015/10/21/sec-faces-new-attack-on-in-house-judges/. The SEC's own General Counsel has acknowledged that it is fair for attorneys to question the fairness of the SEC's rules for administrative proceedings.[4] In fact, recognizing its own shortcomings, the SEC itself now plans to "overhaul its in-house tribunal," to allow defendants to take depositions. *SEC Gives Ground on Judges,* WSJ, Sept. 24, 2015, http://www.wsj.com/articles/sec-gives-ground-on-judges-1443139425. The OTC Market's determination and an adverse initial decision in an SEC in-house forum are not sufficient to establish a history of securities law violations.

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[3] "SEC Wins with In-*House* Judges," WSJ, Jean Eaglesham (May 15, 2015).
[4] Daniel Wilson, *SEC Administrative Case Rules Likely Out Of Date, GC Says,* LAW360, June 17, 2014, *available at http://www.law360.com/banking/articles/548907*

DISCUSSION OF REMEDIES

The SEC wants this Court to impose extreme, unwarranted remedies. At most this Court should require disgorgement of the proceeds of her stock sale and a reasonable civil penalty. The imposition position of either a penny-stock bar or an injunction will destroy Dalmy's ability to earn a living and support her college-aged daughter.

1. Neither an injunction nor a penny-stock bar is warranted.

The SEC claims an injunction and bar are needed to protect the public from Dalmy. That is nonsense. Dalmy's only transgression was opining incorrectly that the shares at issue did not need registration. The public does not need protection from that.

This case is not analogous to *SEC v. Offill*, where the defendant showed a "deliberate disregard" of the law and he "knew that his actions were illegal." 3:07-CV-1643-D, 2012 WL 1138622 *4, *6 (N.D. Tex. Apr. 5, 2012). That did not happen here. Further, the *Offill* court determined his "intentional" violations were egregious in part because he was formerly an SEC employee. (*Id.*) Again, not the case here. Dalmy did not act with scienter. Even if this Court found otherwise, it is a far cry from a former SEC employee intentionally violating the securities laws.

Further, the SEC has failed to establish the prerequisites for issuing an injunction. Dalmy's mistakes, which she acknowledges, were isolated in nature. Indeed, only in this one instance did Dalmy accept client stock as compensation for her services. The stress and burden resulting from defending these claims brought by a U.S. government agency, including the detrimental impact on her law practice, represents a powerful disincentive to engage in future violations. There is simply no reason to conclude that Dalmy will be further tempted to violate the law.

a. ***These penalties are extreme and will destroy her career.***

Dalmy has been a lawyer for more than 30 years. She helps small companies navigate securities laws. Her clients generally are issuers of penny-stocks. The Court should not bar Dalmy

from participating in an offering of penny-stocks. Such a career-ending bar is unnecessary to protect the public interest and would be unjustified because her conduct was not egregious, she lacked scienter, and it is unlikely her violations will recur due to the "lessons learned" from this case. *See SEC v. Patel*, 61 F.3d 137 (2d Cir. 1995).

The same applies to an injunction. An injunction is a "drastic remedy," *Aaron v. SEC*, 446 U.S. 680, 703, 100 S. Ct. 1945, 64 L. Ed. 2d 611 (1980) (Burger, C.J., concurring), and is by no means automatic. *SEC v. Globus Group, Inc.*, 117 F. Supp. 2d 1345, 1349 (S.D. FL 2000.)

Courts across the country have denied SEC injunction requests despite findings of violations of the federal securities laws even in the case of fraud, which is not the case here. See e.g. *SEC v. Pros Int'l*, 994 F.2d 767 (10th Cir. 1993) (no injunction where defendant issued a false opinion about a company's financials); *SEC v. Sargent*, 329, F.3d 34, 38 (5th Cir. 2003) (no injunction imposed for insider trading); *SEC v. Caterinicchia*, 613 F.2d 102, 206 (5th Cir. 1980) (no injunction for false filings); *SEC v. Sierra Brokerage Servs.*, 608 F. Supp. 2d 923, 973-75 (S.D. Ohio 2009) *aff'd*, 712 F.3d 321 (6th Cir. 2013) (no injunction where no likelihood of future violations); *SEC v. Nat'l Student Mktg. Corp.*, 457 F. Supp. 682, 716 (D.D.C. 1978) (no injunction for insider trading); *SEC v. Dunn*, 2:09-CV-2213 JCM VCF, 2012 WL 3096646, at *3-*4 (D. Nev. July 30, 2012) (no injunction for insider trading); *SEC v. Perez*, 09-CV-21977, 2011 WL 5597331, at *3-*5 (S.D. Fla. Nov. 17, 2011) (no injunction for insider trading); *SEC v. Snyder*, CIVAH-03-04658, 2006 WL 6508273, at *5 (S.D. Tex. Aug. 22, 2006) (no injunction for insider trading and misleading Form 10-Q despite scienter); *SEC v. Ingoldsby*, CIV. A. 88-1001-MA, 1990 WL 120731, at *3 (D. Mass. May 15, 1990) (no injunction despite scienter finding).

While the language of an injunction is innocuous, the consequences are severe. Because Dalmy is an attorney who practices before the SEC, the SEC certainly would rely on any

injunction as the basis for immediately suspending her from such practice without any right to a preliminary hearing. (SEC Rules of Practice 102(e)(3)(i)).

In fact, it already has done so. Today, just before Christmas, SEC informed Dalmy that it has suspended her, without any hearing or prior notice, based on this Court's September summary judgment order. The SEC may suspend someone if a court finds she has violated any provision of the federal securities laws, unless the violation was found not to have been willful. (*Id.*) Dalmy will request that the SEC lift the suspension pending this Court's decision on remedies. She also seeks a finding from this Court that her violation was not willful, for the reasons discussed herein. Dalmy's mistake does not merit these consequences.

Other impacts include impairing the ability to open bank accounts and the ability to take out a loan because banks frequently will not accept enjoined persons as customers due to money laundering and risk management considerations. Moreover, banks frequently terminate relationships with customers who are enjoined. Again, given such drastic collateral consequences, an injunction is unwarranted.

b. ***Dalmy's actions caused no harm.***

As discussed above, Dalmy's actions did not harm investors, or at a minimum were not a proximate cause. The shares would have traded, albeit with a delay or with registration, regardless of Dalmy's opinion. Moreover, the SEC introduced no evidence of who purchased the shares at issue or whether any of them lost money, regardless of the later decline in share price.

c. ***Dalmy lacked scienter.***

As discussed above, Dalmy was not involved in the pump-and-dump scheme. Nor did she aid, abet or cause it. Rather, Dalmy's violation was limited to mistakenly opining, in good faith, that the shares at issue were tradeable without registration based on her client's representations. This case involves judgment errors that are undeserving of the sanctions the SEC seeks.

d. *Dalmy's actions were isolated in nature.*

Dalmy violated the law once. While she wrote several opinion letters, the letters were the result of one mistake. Because the letters were based on the same facts and legal analysis, deeming each opinion letter as a separate violation is inappropriate. She determined that no registration was necessary and, therefore, informed the firms involved. Disseminating her opinion to the relevant actors required multiple letters, but that did not give rise to multiple violations.

The SEC also tries to portray Dalmy's actions as repetitious by discussing her alleged history of violations. But as discussed above, this Court should not consider that history because of the lack of due process afforded by either OTC Markets or the SEC. This Court should not deprive Dalmy of her livelihood because of her one mistake in determining that the relevant shares did not require registration.

e. *Dalmy recognizes her culpability.*

Dalmy accepts responsibility for her failing. She considered whether Gasich was a Zenergy affiliate and determined the shares did not need registration. Dalmy's conclusion was incorrect and she understands she violated Section 5.

Even if it were the case that Dalmy denied culpability, this Court should not punish her for it. "The securities laws do not require defendants to behave like Uriah Heep in order to avoid injunctions. They are not to be punished because they vigorously contest the government's accusations." *SEC v. First City Financial Corp., Ltd.* 890 F. 2d 1215, 1229 (D.C. Cir. 1989).

f. *There is no likelihood of future violations.*

To impose an injunction, there must be "positive proof of the likelihood that the wrongdoing will recur." *SEC v. Blatt*, 583 F.2d 1325, 1334 (5th Cir. 1978); *SEC v. Commonwealth Chem. Sec. Inc.*, 574 F.2d 90, 99 (2d Cir. 1978). Here, nothing indicates such a likelihood. Dalmy understands that any future federal securities laws violation will inevitably result in an injunction

and/or penny-stock bar that will end her career. Even without such penalties, any remaining goodwill would evaporate with another violation. Dalmy, a mother of three, is unmarried and has herself and her college-age daughter to support. She will be as careful as possible in conducting her future dealings to avoid any possibility of future improprieties. Neither an injunction nor a penny-stock bar is necessary.

2. Dalmy does not contest disgorgement but does contest prejudgment interest.

Dalmy does not contest the SEC's request that she disgorge the proceeds from her stock sale. Dalmy should not, however, pay prejudgment interest. The decision whether to grant prejudgment interest and the rate used are matters confided to this Court's discretion. *SEC* v. *First Jersey Securities, Inc.*, 101 F.3d 1450, 1476 (2nd Cir. 1996). In considering prejudgment interest, courts consider whether the interest is compensatory or duplicative and the equities in the particular case. *See FDIC. v. UMIC, Inc.*, 136 F.3d 1375, 1388 (10th Cir. 1998). Where only the US Treasury will benefit from a monetary recovery and "where the wronged party will not receive the damages being collected, the importance of awarding prejudgment interest is significantly diminished." *SEC* v. *Syndicated Food Int'l.,* 04 CIV. 1303 NGG VMS, 2014 WL 2884578, at *14 (E.D.N.Y. Feb. 14, 2014), *citing SEC v. Enrenkrantz King Nussbaum,* CV 05-4643 MKB GRB, 2013 WL 831181, at *4 (E.D.N.Y. Feb. 14, 2013).

Here prejudgment interest is not justified. The SEC seeks interest in the amount of $9,877.11, approximately 22% of the proceeds of the stock sale. The disgorgement will be deposited with the US Treasury and will not be divided among victims (because there were no victims). Moreover, Dalmy herself has had little if any benefit from the funds. With an eye toward settlement of this matter, Dalmy kept the sale proceeds in an account since 2010, when she became aware of the SEC's investigation. The settlement never materialized, but Dalmy did not spend the funds. The funds have remained earning almost no interest rate. Dalmy has not

benefitted from the funds and this Court should not impose 22% of the proceeds in interest.

3. ***Dalmy should be subject to a reasonable civil penalty.***

Courts have discretion to impose civil penalties based on each case's particular facts and circumstances. *SEC v. Daly,* 572 F. Supp. 2d 129, 132 (D.D.C. 2008); *SEC* v. *Opulentica, LLC,* 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007). Dalmy does not disagree with the imposition of a civil penalty; she understands she must pay a price for breaking the law. She does, however, disagree with the SEC's characterization of her conduct and its analysis of the factors.

Dalmy already has paid a significant financial price for her violation even without a top-end civil penalty. She is a lawyer who built a thirty year career helping small businesses navigate securities laws. In an era where anyone can research someone on the Internet, it is outdated to argue that the only incentive to obey the law is the threat of penalties. Dalmy's career has been irreparably harmed because of her mistake. Dalmy, who is uninsured, has personally incurred the high cost of this litigation against a government agency. Imposing a large penalty on top of her loss of reputation and her payment of legal fees and disgorgement would be inappropriate.

Additionally, this is a First Tier penalty case. Dalmy acted without scienter and, as discussed above, her actions put no investor funds at risk and did not harm stock buyers. After conducting due diligence, Dalmy considered whether the shares needed registration. Dalmy mistakenly concluded, based on misrepresentations by her client representatives, that the shares could be sold without registration. Dalmy's opinion was incorrect, but was not made with scienter. It is wrong to claim her sale of client stock as compensation for legal services rendered was motivated by "greed."

Dalmy's isolated mistaken opinion repeated in nearly identical letters is not repeated misconduct. Further, she is not a "repeat offender." As noted above, her other issues involved a private entity and a non-final initial decision in an SEC in-house forum. Both lacked due process.

Finally, the SEC ignores Dalmy's cooperation. She testified during the investigation of this case and again after the SEC filed its complaint. Unlike others involved in this case who asserted their Fifth Amendment rights, Dalmy testified twice. Rather than acknowledging her cooperation, the SEC wants this Court to penalize her for not cooperating in the SEC's in-house case against her; a different case, involving different facts, different companies, different people and different allegations. This Court should not penalize Dalmy for purportedly not cooperating with the SEC in a different case. The SEC can penalize her in that case. For this Court to also do so would be a double penalty. To the extent any civil penalty is justified against Dalmy, a vulnerable sole practitioner and single mother, the penalty should be a penalty of no more than $7,500.00.

CONCLUSION

For the foregoing reasons, Diane Dalmy requests that the Court order the following:

1. Deny the SEC's request for an injunction.
2. Deny the SEC's request for a penny-stock bar.
3. Require Dalmy to pay disgorgement of no more than $43,995.00.
4. Deny the SEC's request for prejudgment interest.
5. Require Dalmy to pay a civil penalty of no more than $7,500.00.
6. Find that Dalmy did not act willfully.

Respectfully submitted,

Defendant Diane D. Dalmy
By: /s/ Howard Rosenburg
One of her attorneys

Howard J. Rosenburg (#6256596)
Kopecky Schumacher Bleakley Rosenburg PC
203 N. LaSalle Street, Suite 1620
Chicago, IL 60601
Phone: (312) 380-6631

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that, on December 23, 2015 he caused true and correct copies of the foregoing to be served upon all counsel of record via the Court's CM/ECF System.

/s/ Howard Rosenburg

EXHIBIT 25

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. C-07707-A
ZENERGY INTERNATIONAL, INC.)

WITNESS: Diane D. Dalmy

PAGES: 1 through 190

PLACE: Securities and Exchange Commission

Denver Regional Office

1801 California Street, Suite 1500

Breckenridge Conference Room

Denver, CO 80202

SECURITIES & EXCHANGE COMMISSION
RECEIVED
AUG 0 8 2011
CHICAGO REGIONAL OFFICE

DATE: Friday, July 22, 2011

The above-entitled matter came on for hearing pursuant to notice at 9:29 a.m.

Page 170

1 period of time and I'd like to try to realize $40,000."
2 Q Okay. So when I look at this statement I see
3 securities being sold from August 17 --
4 A Uh-huh.
5 Q -- mostly on August 17 on through August 20 and
6 21.
7 A Uh-huh. Right.
8 Q And you said earlier you instructed the broker to
9 sell them over an extended period of time?
10 A See, again, I'm not -- I don't trade in stocks,
11 so I believe in the lingo that he would have asked me
12 what's your buy/sell order, and I believe I gave him
13 parameters as far as this is the number of shares I'd like
14 to sell and, you know, I'd like to realize 40,000. And I
15 think I kept it open so that he could, you know, just sell
16 the share -- or sell the shares -- put the bid out and sell
17 the shares for me. And so I -- yeah, go ahead.
18 Q At the time you placed that order, were you aware
19 of the market activity in Zenergy stock?
20 A No, I have no idea.
21 Q Did you place that order -- when did you place
22 that order with him?
23 A Well, that August 12th, or right around there.
24 August 17.
25 Q Why did you place the order on August 12 or

Page 171

1 August 17?
2 A I probably needed the money. It was legal fees
3 due and owing to me.
4 Q So you just wanted to liquidate?
5 A A portion of it. I was in no -- I wasn't in any
6 rush. I just got these deposited. And I don't recall any
7 expense that I needed cash for, probably day-to-day. And
8 they were legal fees, in my eyes, that were due and owing
9 to me.
10 Q Okay. Was there any other reason for the timing
11 of these sales?
12 A Not at all. It was just arbitrary.
13 I could have easily waited two months and sold
14 them. I just made the decision and then let it be.
15 (SEC Exhibit No. 219 was
16 marked for identification.)
17 Q I'm showing you Zenergy Exhibit 219, which is a
18 one-page Scottrade authorization to wire funds.
19 A Oh, okay, so they wired the funds to me. Uh-huh.
20 Q And it's dated by your signature April 16, 2010.
21 A Uh-huh.
22 Q Is that your signature?
23 A Uh-huh.
24 Q Why did you request a -- submit an authorization
25 to wire funds on that day?

Page 172

1 A That's perhaps when I decided -- in my mind it's
2 like I have money in trust and I earned my fees and it's
3 there. I had these -- the sale and it was there. So I
4 just decided that I would -- living expenses.
5 Perhaps I was low in my savings account and in my
6 checking account, and so I asked for the money to be wired
7 and I was using that for living expenses. I don't recall
8 if there was any reason other than that.
9 Q Were these proceeds or any portion of these
10 proceeds sent to any other individual or entity?
11 A Oh, no, they're mine.
12 Q And your recollection is you used them for living
13 expenses --
14 A Oh, absolutely.
15 Q -- you don't --
16 A Absolutely, yes. I'm a sole practitioner.
17 Q You don't remember a specific purpose, in other
18 words, where the proceeds went?
19 A No. No. I'm a sole practitioner. I have living
20 expenses.
21 (SEC Exhibit No. 220 was
22 marked for identification.)
23 Q Okay. Showing you a document I'm marking as
24 Zenergy Exhibit 220, which is a letter from Pink Sheets --
25 Pink OTC Markets to you, dated June 24, 2009 --

Page 173

1 A Yes. Yes.
2 Q -- notifying you of potential suspension --
3 A Uh-huh.
4 Q -- and listing out Ballpark 20 companies.
5 A You know, it --
6 MR. MACPHAIL: Is there a question pending?
7 THE WITNESS: Okay.
8 BY MR. HELMS:
9 Q First, do you recognize this letter?
10 A Oh, yes. Yes.
11 Q Okay. Could you describe the circumstances
12 surrounding this letter?
13 A My initial understanding was that you
14 submitted -- I would prepare these disclosure statements
15 for these clients, and my focus there was full disclosure.
16 I wanted as much information about the company that I could
17 glean and obtain business plans, what have you, from
18 management.
19 My understanding during June, at this point in
20 time, was that it was similar to the SEC, that you filed
21 your disclosure statement as you did your registration
22 statement and you would get comments back and you would --
23 you know, then you would go back. And so I realized that
24 that wasn't the case.
25 So these little indiscretions or typographical

EXHIBIT 26

Diane D. Dalmy
Attorney at Law

PRACTICE AREAS

Alternative Public Offerings (APOs) & Reverse Mergers

Diane Dalmy is a recognized leader in advising and representing issuers in all methods of achieving public company status, including Reverse Mergers, Alternative Public Offerings (APOs) and Self Registration. DDL's Corporate and Securities Law Practice Groups support clients in navigating the complex U.S. regulatory landscape and advising them on sophisticated nuances involved in reverse mergers and related financing transactions.

A reverse merger is a method by which an active privately-owned operating company goes public by completing a transaction with a public shell company, with the public company surviving the transaction but having issued a controlling share of the company's stock to the owners of the privately-owned operating company. The public shell company then typically changes its name to reflect the operating business of the privately-owned operating company. Most public companies that enter into reverse mergers are shell companies, which are companies that have no significant operations or assets.

An alternative public offering is the combination of a reverse merger with a simultaneous private investment in public equity (PIPE). APOs allow companies an alternative to an IPO as a means of going public while raising capital. APOs have gained momentum in recent years because going public via reverse merger allows a privately-held company to become publicly-traded faster, at a lower cost and with less stock dilution than through a traditional IPO.

We support our clients through their transition from being a private company to becoming a public company, helping guide the management teams and boards of directors through the process. In the post Sarbanes-Oxley era, going public has become increasingly complex for companies. SRFF specializes in advising clients, specifically small to mid-tier companies, through the process and route to gaining access to the U.S. stock markets.

With the recently approved JumpStart Our Business Startups Act (JOBS Act), including a Crowd Funding provision, the landscape and alternatives for companies seeking to go public and raise money is likely to change even further. As companies continue to navigate through the continuous financial reforms, Diane Dalmy Law remains committed to working closely with clients to ensure they are ahead of the curve and that they are fully informed about the best and most suitable alternatives for them. Diane's highly skilled and experienced long-standing and strong relationship with the U.S. regulators consistently keep clients up-to-date on relevant developments.

Exchange Act Reporting & Compliance Matters

The Securities Exchange Act of 1934 established ongoing reporting requirements for companies that have:

- Securities registered under the Exchange Act (referred to as Section 12 companies); or
- Any issuer who has had a registration statement effective under the Securities Act of 1933, in the year in which the registration statement becomes effective and, thereafter, in any year in which the securities to which the registration statement related are held of record by 300 or more persons (referred to as Section 15(d) companies).

The Exchange Act formed the basis of the reporting system and market place we know today. Companies became more regulated and more transparent to the public as the filing of quarterly, annual and other reports were mandated. We advise issuers on complying with the complex securities laws, rules and regulations applicable to such companies, including periodic reporting requirements under the Exchange Act, proxy rules, and other compliance matters, such as The Sarbanes-Oxley Act of 2002.

We recognize that with the advent of technological change and the continued innovation in ways that public companies are communicating with shareholders and the public, they are faced with more complex issues than ever before. Diane Dalmy Law aids its clients by keeping them informed of the latest developments and changes, and by helping them stay up-to-date and current with their responsibilities to the public. We offer fixed monthly fee arrangements for the ongoing reporting work matters, allowing for our clients to know not only what their costs will be ahead of time to stay current on a month-to-month basis, but also so that our clients understand that they can always call us and we will be available to assist them without the concern of having the clock running. We find that greater and open communication with our clients in advance of actions, the more successful and compliant they are.

Our ongoing representation for routine SEC filing matters covers the following:

- Annual Reports on Form 10-K
- Quarterly Reports on Form 10-Q
- Current Reports on Form 8-K
- Proxy Statement on Schedule 14A, as well as planning and coordinating the Client's Annual Meetings of Shareholders
- Shareholder Communication Matters (via press releases, social media, earnings calls, etc.)
- Regulation FD Compliance Matters
- Responses to SEC Comment Letters
- Beneficial Ownership Reporting Matters for the Company's Officers and Directors on Forms 3, 4 and 5, as well as Forms 13d or 13g
- Other General Disclosure and Compliance Practices and Matters

Registration Statements

Diane Dalmy Law has extensive experience in the preparation and filing of registration statements, including filings on Forms S-1, S-3, S-4, S-8 and 10, as well as filings for foreign filers on Forms F-1, F-4, F-6 and 20-F, whether

such filings are for new companies seeking to go public or companies that are already public and are seeking to register securities for sale or resale. DDL regularly files registration statements relating to the proposed resale of shares issued, or underlying other securities issued, in PIPE and other alternative financing transactions, including equity lines of credit. Diane Dalmy Law has also had extensive involvement with the preparation and filing of registration statements covering the proposed future sale of securities, a process whereby the issuers take them "off the shelf" when needed. Diane's model for registrations statements is unique and has been developed over many years of filings and working closely with the staff of the Securities and Exchange Commission with respect to such filings. We believe in working efficiently to our fullest potential on each and every filing. Our experience and expertise in this area has also allowed us to develop and offer our clients a flat-rate billing alternative so that they can get the most out of Diane and are fully aware of what the costs will be ahead of time.

Restricted Stock & Beneficial Ownership Filings

Diane Dalmy Law works closely with issuers, shareholders, broker dealers and transfer agents with respect to issues regarding the proposed sale or transfer of restricted securities. We help advise and guide our clients with the myriad of issues associated with restricted stock, and with their compliance with the safe harbor provisions under Rule 144 of the Securities Act of 1933. We assist shareholders with the issues associated in having restricted legends removed from their securities, and we assist issuers and Broker-Dealers clients in establishing procedures and protocols to effectively comply with applicable rules and regulations. Diane Dalmy Law also helps in facilitating the filings of Forms 3, 4 and 5's, as well as Schedules 13D and 13G, when needed for client affiliates.

ABOUT DIANE

Diane Dalmy Law is a specialized boutique law firm that provides Experienced, professional representation for all matters involving the securities industry, as well as general corporate and litigation matters. Our clients include private and public corporations (from start-ups to NYSE-listed companies), broker-dealers, investment advisors, individual corporate investors, partnerships and other entities.

Read More +

PRACTICE AREAS

Alternative Public Offerings (APOs) & Reverse Mergers

Exchange Act Reporting & Compliance Matters

Registration Statements

Restricted Stock & Beneficial Ownership Filings

CONTACT DIANE

Ph: +1 (303) 985-9324
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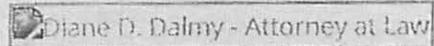
Email:

2000 East 12th Avenue
Suite 32/10B
Denver, CO 80206



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Home | About | Practice Areas | Contact Diane

EXHIBIT 27

June 24 2009

Diane D. Dalmy
8965 W. Cornell Place
Lakewood, Colorado 80227
USA
Phone: 303-985-9324
Fax: 303-988-6954
Email: [redacted]

Dear Ms. Dalmy:

You have submitted Attorney Letters to Pink OTC Markets pursuant to Pink OTC Markets' Attorney Letter Guidelines for the following companies:

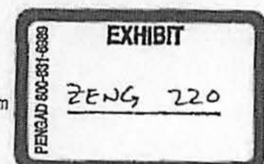
EKO International Corp.
Level Vision Electronics, Ltd.
Hydrogen Hybrid Corporation
Polaris International Holdings, Inc.
Xynergy Holdings Inc.
Ventana Bootech Inc
Bryn Resources, Inc.
Hydrogenetics Inc.
World Mobile Network Corp
China Career Builder Corp
Diverse Media Group, Inc.
Oxbow Resources Corp.
Competitive Games International, Inc.
D Mecatronics, Inc.
Patriot Energy Corp.

Each of your 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."

Pink OTC Markets recognizes the crucial role of attorneys in the disclosure process. Attorneys prepare, and/or assist in the preparation of disclosure materials that are posted in the OTC Disclosure and News Service by, or on behalf of issuers. These materials are relied upon by public investors in making their investment decisions. Thus, Pink OTC Markets, and the investing public, must be able to rely upon the integrity of in-house and retained lawyers who represent issuers.

Pink OTC Markets is not able to consistently rely on your Attorney Letters. On multiple occasions, cursory reviews by Pink OTC Markets of the disclosure published by the issuers and cited in your opinion have revealed significant missing and/or inaccurate information. Khushboo Shrestha, from Pink 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.

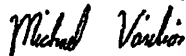
Submission of an Attorney Letter to Pink OTC Markets expressing the opinion that adequate current information is available pursuant to Pink OTC Markets' Guidelines should occur only *after* you review the issuer's disclosure materials and are able to truthfully make such an assertion. Pink OTC Markets 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 Att orney Letters and your subsequent communications with Pink OTC Markets 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.

This letter serves as a warning that upon submission of a further inadequate Attorney Letter, Pink OTC Markets 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.

Sincerely,



Michael Vasilios
Pink OTC Markets Inc.
Director of Issuer Compliance

cc: The Nelson Law Firm, LLC

EXHIBIT 28

Sent: Thursday, June 25, 2009 7:44:26 PM
To: 'Diane Dalmy'
Subject: RE: Letter from Pink OTC Markets, Inc.

CC:
From:
Sent:
Subject:
To:

Diane,

As mentioned to you before, attorneys need to review the disclosure statement and other documents posted by the issuer on pinksheets.com to ensure they conform to our guidelines. You have repeatedly failed to do so. Please see a portion of the Attorney Letter Agreement that has been copy pasted below. You have signed this Agreement for multiple companies on Pink Sheets.

From the Attorney Letter Agreement:

"Section 3. Attorney warrants and represents that (i) the document review and other duties required by the Guidelines have been competently performed in connection with the preparation of each Letter posted through the OTC Disclosure and News Service and (ii) each Letter conforms to the Guidelines."

From Exhibit A (LETTERS WITH RESPECT TO ADEQUATE CURRENT INFORMATION) Guidelines

#8 - "(iii) complies as to form with the Pink OTC Markets' Guidelines for Providing Adequate Current Information"

Also, we do reviews of the documents to make sure that both the Attorney Letter and the Disclosure documents are in accordance with our guidelines. However, if the disclosure statement and/or the Attorney Letter are constantly deficient, we may determine that we are unable to rely on the attorney's letter. The issuers Disclosure documents must be complete in order for you to provide an Attorney Letter. If the issuer fails to provide full disclosure in accordance with our guidelines you can not provide an accurate Attorney Letter for them.

As stated in the letter that was mailed to you, please understand that that upon submission of a further inadequate Attorney Letter, Pink OTC Markets 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.

Regards,

Khushboo Shrestha

Issuer Services

Pink OTC Markets Inc.

304 Hudson Street, 2nd Floor

New York, NY 10013

issuers@pinkotc.com

212-896-4420 W

212-896-5920 F

-----Original Message-----
From: Diane Dalmy [mailto: [redacted]
Sent: Wednesday, June 24, 2009 6:38 PM
To: Issuer Services
Subject: RE: Letter from Pink OTC Markets, Inc.

Khushboo - I need to discuss the contents of the letter you forwarded to me. I am a very good lawyer and prepare opinion letters with a great deal of due diligence and care. The situation involving the majority of these clients is that they alone prepare their own information statement and disclosure. I do not assist at all. They have not engaged my services in connection with

preparation of the information statement. Once the information statement is posted, I review and indicate the areas that I believe are deficient. I inform the client. However, my client's position has been to rely on Pink Sheets and its determination of deficiencies. The client responds to those deficiencies and I post a new letter after reviewing their corrections.

I need to discuss with you whether this is a correct procedure. I am well aware of the fact that certain deficiencies exist. However, an example today is when my client Xygenery Holdings revised their filing. They posted these filings prior to my review. I reviewed and informed him that the certification was not properly prepared and he subsequently received your email.

If I need to change my procedures, then I will do so. However, I would like to discuss this with you as it has entirely been my impression that Pink Sheets will review the information statement and advise the issuer as to deficiencies. I have actually informed my clients that is a role of Pink Sheets and we should rely upon their comments.

I will telephone you tomorrow.

Diane Dalmy

Diane D. Dalmy

Attorney at Law

8965 W. Cornell Place

Lakewood, Colorado 80227

303.985.9324 (telephone)

303.988.6954 (fax)

-----Original Message-----

From: Issuer Services [mailto:issuerservices@pinkotc.com]

Sent: Wednesday, June 24, 2009 3:56 PM

To: 'Diane Dalmy'

Cc: Mike Vasilios

Subject: Letter from Pink OTC Markets, Inc.

Ms. Diane Dalmy,

Please find attached a copy of correspondence that was mailed to you this afternoon.

Best regards,

Khushboo Shrestha

Issuer Services

Pink OTC Markets Inc.

304 Hudson Street, 2nd Floor

New York, NY 10013

issuers@pinkotc.com

212-896-4420 W

212-896-5920 F

[cid:image001.gif@01C9F4E4.88B01B10]

Pink OTC Markets Inc. provides the leading inter-dealer quotation and trading system in the over-the-counter (OTC) securities market. We create innovative technology and data solutions to efficiently connect market participants, improve price discovery, increase issuer disclosure, and better inform investors. Our marketplace, comprised of the issuer-listed OTCQX and broker-quoted Pink Sheets, is the third largest U.S. equity trading venue for company shares.

This document contains confidential information of Pink OTC Markets and is only intended for the recipient. Do not copy, reproduce (electronically or otherwise), or disclose without the prior written consent of Pink OTC Markets. If you receive this message in error, please destroy all copies in your possession (electronically or otherwise) and contact the sender above.

No virus found in this incoming message.
Checked by AVG - www.avg.com
Version: 8.5.339 / Virus Database: 270.12.90/2199 - Release Date: 06/24/09 06:23:00

EXHIBIT 29

September 24, 2009

Diane D. Dalmy
8965 W. Cornell Place
Lakewood, Colorado 80227

Subject: Prohibited Attorney's List

Dear Ms. Dalmy:

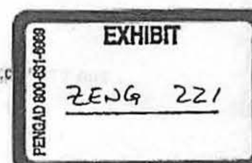
This is to inform you that Pink OTC Markets Inc. (formerly Pink Sheets LLC) will no longer accept legal opinions from you or your firm. This decision is based upon our assessment of the Attorney Letters that you have provided to Pink OTC Markets subsequent to the warning letter sent to you earlier this year dated June 24, 2009, stating "that upon submission of a further inadequate Attorney Letter, Pink OTC Markets may determine that it will not accept any Letter submitted by you."

Pink OTC Markets has established a process in which attorneys provide letters with respect to adequate current information to assist companies to qualify for the Pink Sheets Current Information OTC Market Tier on www.pinksheets.com. We rely on opinions from counsel to state that the information posted on the OTC Disclosure and News Service provides adequate, current, publicly available information regarding the issuer and its securities. These materials are relied upon by public investors in making their investment decisions. Thus, Pink OTC Markets, and the investing public, must be able to rely upon the integrity of in-house and retained lawyers who represent issuers.

Despite our warning letter to you dated June 24, 2009, we find that you have submitted inadequate letters in support of inadequate disclosures for issuers such as Competitive Games International, Inc. (CGMS), Diverse Media Group, Inc. (DVME), Com-Guard.com, Inc. (CGUD), and Hydrogenetics Inc. (HYGN). The missing information and inconsistencies in both the issuer's disclosure and your Attorney Letter make it obvious that you did not perform the diligence necessary to continue writing such letters to Pink OTC Markets.

Some of the recent issues we have discovered in reference to the above issuers include and are not limited to;

1. For CGMS the disclosure posted 9/11/09 had an incomplete Statement of Stockholders' Equity.
2. For DVME an incorrect date of 3/31/09 was used for the balance in the Statement of Changes in Shareholders' Equity in the disclosure posted 8/14/09 for period ending 6/30/09.
3. Also for DVME, the Attorney Letter posted 9/8/09 had two incorrect dates referenced in the letter. The letter was for the quarter ended 6/30/09 however your letter refers to the documents containing information for this review that were posted 3/24/08, prior to the quarter end. The same letter indicated that a shareholders' list dated as of September 30, 2008 was used to confirm the number of outstanding shares.
4. For CGUD the disclosure posted 9/4/09 for the period ending 6/30/09 showed incorrect balance dates of 6/30/04 and 6/30/05.



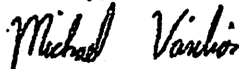
5. Also for CGUD, the disclosure posted 9/4/09 did not provide the addresses for the beneficial owners.
6. For HYGN the Attorney Letter posted 9/22/09 does not include your signature.

We also took a brief look at the new disclosure posted for Mammoth Energy Group, Inc. and found some inconsistent information. There were significant offerings listed in the disclosure to The Stone Financial Group Inc., Joe V. Overcash and Robert Matthews yet no beneficial owners are listed. The disclosure also states that the Issuer currently has 0 full-time employees, 0 part time employees and 0 work-for-hire contractors. Coupled with no revenues, nominal expenses, nominal assets consisting of cash and investments this appears to be a shell however the disclosure document states that the issuer is not a shell.

Based on the information available, Pink OTC Markets has determined that it cannot rely on any such future Attorney Letters or other opinions written by you. Consequently, Pink OTC Markets has determined to add your name to our Prohibited Attorney's list found on http://www.pinksheets.com/pink/otcguide/issuers_service_providers.jsp?index=6.

Lastly, please notify each of your clients of this determination.

Sincerely,



Michael Vasilios
Director of Issuer Compliance
(212) 896-4486

Cc: The Nelson Law Firm, LLC

EXHIBIT 30

INITIAL DECISION RELEASE NO. 886
ADMINISTRATIVE PROCEEDING
File No. 3-16339

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of JOHN BRINER, ESQ., DIANE DALMY, ESQ., DE JOYA GRIFFITH, LLC, ARTHUR DE JOYA, CPA, JASON GRIFFITH, CPA, CHRIS WHETMAN, CPA, PHILIP ZHANG, CPA, M&K CPAS, PLLC, MATT MANIS, CPA, JON RIDENOUR, CPA, and BEN ORTEGO, CPA	INITIAL DECISION AS TO DIANE DALMY, ESQ. September 18, 2015

APPEARANCES: David Stoetling, Jack Kaufman, Jason W. Sunshine, and Jorge G. Tenreiro for the Division of Enforcement, Securities and Exchange Commission

Howard J. Rosenburg, for Respondent Diane Dalmy, Esq.[1]

BEFORE: James E. Grimes, Administrative Law Judge

SUMMARY

In this Initial Decision, I find that Respondent Diane Dalmy willfully violated Section 17(a)(1) and (3) of the Securities Act of 1933 but dismiss the charge that she violated Section 17(a)(2). I order Dalmy to cease and desist from further violations of Section 17(a)(1) and (3) and order Dalmy to pay civil penalties totaling $680,000.

INTRODUCTION

Relying on Section 8A of the Securities Act, the Securities and Exchange Commission instituted this proceeding against Dalmy in January 2015, with an Order Instituting

[1] Mr. Rosenburg withdrew as counsel for Dalmy in May 2015, prior to the hearing in this proceeding, and Dalmy represented herself at the hearing and in post-hearing briefing.

Administrative and Cease-and-Desist Proceedings (OIP). The OIP alleges that Dalmy violated Section 17(a)(1), (2), and (3) of the Securities Act.[2]

I held a hearing in this matter on May 27, 2015, in Denver, Colorado. During the hearing, the Division of Enforcement called two witnesses, including Dalmy. Aside from herself, Dalmy called no witnesses. I admitted fifty of the Division's exhibits and four of Dalmy's exhibits.[3]

FINDINGS OF FACT

1.1 Background

I base the following findings of fact and conclusions on the entire record and the demeanor of the two witnesses who testified at the hearing, applying preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 100-04 (1981). All arguments and proposed findings and conclusions that are inconsistent with this decision are rejected. I find the following facts to be true.

This case concerns legal opinions submitted in connection with certain securities issuers' registration statements. Issuers of securities are generally not permitted to offer their securities for sale "[u]nless a registration statement has been filed [with the Commission] as to [the] security" and "is in effect." 15 U.S.C. § 77e(a), (c). Form S-1 is the form the issuer of a security uses to register new securities under the Securities Act. *See* 17 C.F.R. § 239.11. Schedule A of the Securities Act lists those matters that must be provided in a registration statement. *See* 15 U.S.C. §§ 77g(a)(1), 77aa. Among other matters, a registration statement must be accompanied by "a copy of the opinion or opinions of counsel in respect to the legality of the issue." 15 U.S.C. § 77aa(29); *see* 17 C.F.R. § 229.601(b)(5). The opinion of counsel must "indicat[e] whether [the securities] will, when sold, be legally issued, fully paid and non-assessable, and, if debt securities, whether they will be binding obligations of the registrant." 17 C.F.R. § 229.601(b)(5). Counsel must also consent to the use of his or her opinion in connection with the filing of a Form S-1 registration statement. 15 U.S.C. § 77g(a)(1).

Dalmy is an attorney who lives in Denver, Colorado. Answer at ¶ 8. She received her law degree in 1989. Tr. 15. Dalmy's practice focuses on corporate and securities law, specializing in Commission filings. Tr. 15. According to her website, she "has extensive

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2 Ten other Respondents were charged in the OIP; proceedings as to the ten others have been stayed. *John Briner, Esq.*, Admin. Proc. Rulings Release No. 2921, 2015 SEC LEXIS 2824 (July 9, 2015); Admin. Proc. Rulings Release No. 2803, 2015 SEC LEXIS 2346 (June 11, 2015); Admin. Proc. Rulings Release No. 2656A, 2015 SEC LEXIS 1823 (May 11, 2015); Admin. Proc. Rulings Release No. 2556, 2015 SEC LEXIS 1429 (Apr. 17, 2015); Admin. Proc. Rulings Release No. 2535, 2015 SEC LEXIS 1381 (Apr. 13, 2015).

3 Citations to the Division's exhibits and Dalmy's exhibits are noted as "Div. Ex. ___" and "Resp. Ex. ___," respectively. The Division's and Dalmy's post-hearing briefs are noted as "Div. Br. at ___" and "Resp. Br. at ___," respectively.

experience in the preparation and filing of registration statements, including filings on Form[] S-1." Div. Ex. 97 at 3; *see also* Resp. Br. at 2 ("I am an experienced securities attorney, in practice for twenty five years."). Since September 2009, she has been listed by OTC Markets as a prohibited attorney.[4] *See* Div. Exs. 101, 104.

1.2 The allegations and John Briner's background

In the OIP, the Division alleged that Dalmy provided false opinion letters in support of the S-1 registration statements of eighteen issuers.[5] OIP at ¶¶ 27, 52, 60-64. The first issuer was Stone Boat Mining Corp. As to Stone Boat, Dalmy admits that she provided an opinion letter and authorized its use in connection with the filing of Stone Boat's Form S-1, but denies that her opinion letter was false. Tr. 20, 46; Resp. Br. at 3-4. As to the remaining seventeen issuers (the post-Stone Boat issuers), Dalmy admits that, contrary to what was stated in the opinion letters, she conducted no investigation into the issuers whatsoever. Tr. 27, 30-31. She asserts, however, that she merely provided the issuers with "draft" opinion letters (1) in preparation for conducting an investigation; and (2) so that the Forms S-1 could be properly formatted for eventual filing with the Commission. Tr. 23-25, 38, 48-49, 136. She denies that she authorized the issuers to use her draft opinion letters in connection with the filing of their Form S-1 registration statements. Tr. 86-87; *see, e.g.*, Resp. Br. at 2, 4. As a result of Dalmy's litigation position, the factual issues in this case are narrow: (1) whether Dalmy authorized the seventeen post-Stone Boat issuers to use her opinion letters in connection with the filing with the Commission of their Form S-1 registration statements; and (2) whether Dalmy's opinion letter for Stone Boat's Form S-1 was false.

To put this matter in context, the OIP included allegations against eleven respondents: John Briner, Dalmy, two accounting firms, and seven accountants. All respondents save Dalmy have since offered to settle; Dalmy was the only respondent at the hearing. In the OIP, the

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[4] In June 2009, Dalmy received a warning letter from OTC Markets (then known as Pink OTC Markets) concerning deficiencies related to attorney letters for fifteen companies listed by OTC Markets. *See* Div. Ex. 102. When OTC Markets notified Dalmy three months later that it had added her to its prohibited attorneys list, OTC markets said "[d]espite [its] warning letter," it found "that [Dalmy] ha[d] submitted inadequate letters in support of inadequate disclosures for [several] issuers." Div. Ex. 104 at 2. It added that "[t]he missing information and inconsistencies in both the issuer[s'] disclosure[s] and your Attorney Letter[s] make it obvious that you did not perform the diligence necessary to continue writing such letters to . . . OTC Markets." *Id.*

[5] Those eighteen issuers are: Bonanza Resources Corp., Braxton Resources Inc., Canyon Minerals Inc., CBL Resources Inc., Chum Mining Group Inc., Clearpoint Resources Inc., Coronation Mining Corp., Eclipse Resources Inc., Gaspard Mining Inc., Gold Camp Explorations Inc., Jewel Explorations Inc., Kingman River Resources Inc., Lost Hills Mining Inc., PRWC Energy Inc., Seaview Resources Inc., Stone Boat Mining Corp., Tuba City Gold Corp., and Yuma Resources Inc.

Division alleged that Dalmy provided Briner with opinion letters that falsely stated that she "'investigated' and 'examined'" the issuers. *Id.* at ¶ 4. Continuing, the Division alleged that Briner then engaged the accounting respondents who issued false audit reports. *Id.* at ¶ 5. According to the Division, Dalmy violated Section 17(a)(1), (2), and (3) of the Securities Act. *Id.* at ¶ 179; Div. Br. at 18-19.

The evidence presented during the hearing established that, as the Division alleged, Briner was placed on the OTC Markets prohibited attorneys list in 2006. Div. Ex. 101 at 1; *see* OIP at ¶ 77. In 2010, the United States District Court for the Southern District of New York enjoined Briner from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, imposed an officer and director bar, prohibited him from participating in a penny stock offering, and ordered him to pay over $92,000 in disgorgement, interest, and penalties. Div. Ex. 106 at 1-6 (comprising Final Judgment as to Briner in *SEC v. Golden Apple Oil & Gas, Inc.*, No. 09-cv-7580 (S.D.N.Y. Nov. 3, 2010)). After the judgment was entered in *Golden Apple*, the Commission suspended Briner from appearing before it for five years. Div. Ex. 107 (comprising *John Briner*, Exchange Act Release No. 63371, 2010 SEC LEXIS 3936 (Nov. 24, 2010)).

During the hearing in this matter, Dalmy admitted that she was aware of Briner's checkered regulatory history. She was aware by December 2012 that Briner was on the OTC Markets prohibited attorneys list. Tr. 96. Dalmy believed that this resulted from Briner's "involve[ment]" in the *Golden Apple* litigation. Tr. 96. Dalmy also admitted being generally aware that Briner had been the subject of a previous administrative proceeding before the Commission. Tr. 99-100.

1.3 The evidence

Turning to the specific facts in this case, in July 2012, Stone Boat filed a Form S-1 through the Commission's EDGAR filing system.[6] Tr. 19; Div. Ex. 21 at 1. The first page of Stone Boat's Form S-1 stated that "[c]opies of all communication" should be provided to "Diane D. Dalmy[,] Attorney at Law." Div. Ex. 21 at 1. The first page then listed Dalmy's address and telephone number. *Id.* Attached to the Form S-1 as exhibit 5.1 was a two-page opinion letter Dalmy prepared. Tr. 19-20; Div. Ex. 21 at 28, 41. In the letter, Dalmy said that she:

> made such investigations 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.

[6] In the unlikely event that the reader is unfamiliar with EDGAR, it is a system maintained by the Commission for the electronic filing of documents. EDGAR stands for Electronic Data Gathering, Analysis and Retrieval.

> I have examined and am familiar with the originals or copies, certified or otherwise identified to my satisfaction, of such other documents, corporate records and other instruments as I have deemed necessary for the preparation of this opinion.

Div. Ex. 21 at 41. Dalmy also said:

> I am of the opinion that the shares of Common Stock held by the Selling Shareholders are validly issued, fully paid and non-assessable. 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[.]"

Id. at 42 (formatting altered).[7]

Subsequently, between November 30, 2012, and January 31, 2013, the seventeen post-Stone Boat issuers listed in footnote five, *supra*, filed Form S-1 registration statements that listed Dalmy as counsel and included Dalmy's opinion letter as an exhibit. Each opinion letter contained the same language as that found in Stone Boat's opinion letter. *See* Div. Exs. 1-10, 14-15, 18-20, 24-25; *see also* Tr. 31-32 (discussing the fact that the opinion letters used standard language and "were all identical").

Dalmy testified that she authorized the filing of her opinion letter only in connection with Stone Boat's Form S-1. Tr. 45-46. She said that Briner paid her $1,750 to provide the Stone Boat opinion, review "his draft of the registration statement," and provide comments and revisions. Tr. 47. Dalmy asserted that in connection with preparing the opinion letter, she "engaged in a level of due diligence." Tr. 46. She thus "spoke[] with the auditors" and "reviewed some type of geology report" and "the asset purchase agreements." Tr. 46. The Division presented no direct evidence to refute this testimony.

Dalmy conceded that she "never . . . communicat[ed] with any of the officers[,] . . . directors," or auditors of the seventeen post-Stone Boat issuers. Tr. 27. According to her, this was because she never gave permission to Briner or the seventeen other issuers to use her opinion letters. Tr. 86-87. She professed to being flabbergasted that her opinion letters were used in connection with these seventeen other Forms S-1. Tr. 45-46, 57, 69, 108. Dalmy asserted that she had simply provided draft opinion letters for submission to an "EDGAR agent" who was supposed to "EDGARize" the complete Form S-1 package in preparation for filing with the Commission.[8] Tr. 23-24, 136. She testified that the plan was that after she and Briner

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[7] Briner amended Stone Boat's Form S-1 on September 24 and again on October 17, 2012. Div. Exs. 22, 23; *see* Div. Ex. 95 at 16.

[8] Dalmy testified that an EDGAR agent is someone whose business involves submission of filings via EDGAR. Tr. 135 ("they are the ones who push the button that gets the document

determined which issuers would actually file their Forms S-1, she would take the additional steps of "conduct[ing] due diligence and obtain[ing] engagement letters." Tr. 25, 38, 48-49. Dalmy asserted that she expected that only "three or four" of the post-Stone Boat issuers' Forms S-1 "actually would be filed." Tr. 25. She expected to be paid about $20,000 per issuer for her involvement in the submission of the post-Stone Boat issuers' registration statements. Tr. 25, 49.

Dalmy testified that in general, after a registration statement "package" is assembled, the EDGAR agent "go[es] through" a "process" before submitting the package via EDGAR. Tr. 138. Among other things, the agent must circulate the proposed filing to "[e]veryone . . . on [a] distribution list." Tr. 33. According to Dalmy, the final document is not "filed until everyone on [the] distribution list emails in their consent" to the filing. Tr. 33. Because this process did not take place with respect the seventeen post-Stone Boat issuers, Dalmy asserted that she was duped by Briner. Tr. 117.

The objective evidence does not support Dalmy's version of events. Indeed, as detailed below, Dalmy's own e-mails show that she knew that her opinion letters—letters that she conceded were false because she did not investigate the issuers in question—would be filed in support of the issuers' Form S-1 registration statements.

Tiffany Posil is an attorney employed by the Commission in its Division of Corporation Finance. Tr. 149-50. At the hearing, she explained the comment process that occurs within the Commission after an issuer files a Form S-1. Ms. Posil explained that attorneys in Corporation Finance are assigned to review registration statements to determine whether the statements comply with federal securities statutes in general and certain disclosure requirements specifically. Tr. 150-53.

If Corporation Finance discovers a deficiency, it will send the issuer written comments for the issuer's review and then engage in a dialogue with the issuer in hopes of addressing any problems. Tr. 152. Ms. Posil explained that shortly after being assigned to review a Form S-1, the assigned Corporation Finance attorney will typically identify the counsel listed on the first page of the Form S-1 and then contact that counsel in part to inform counsel who within Corporation Finance will be reviewing the Form S-1. Tr. 153. The Corporation Finance attorney will also confirm whether counsel will accept correspondence by e-mail. Tr. 153-54. Once the comment process is complete, the Commission will allow the registration statement to take effect. Tr. 154-55.

Consistent with this process, Corporation Finance attorney Ronald E. Alper phoned Dalmy on July 31, 2012, after reviewing the Form S-1 for Stone Boat. *See* Div. Ex. 96 at 1. Mr. Alper was unable to reach Dalmy and therefore left her a voicemail during which he evidently gave her his e-mail address. *Id.* After listening to the voicemail, Dalmy sent Mr. Alper an e-mail in which she provided her contact information and said "Please send the comment letter when available to me via email." *Id.* Dalmy was thus familiar with how the Corporation Finance comment process functioned. *See id.*; *see also* Tr. 54.

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electronically filed"). She explained that "EDGARizing" a document involves preparing a document for filing via EDGAR. Tr. 136.

In late November 2012, Briner sent Dalmy an e-mail in which he asked whether she would "be willing to be counsel on [the] S[-]1" for Chum Mining "as well and provide [a] legal opinion." Div. Ex. 95 at 17. Briner attached to the e-mail a document entitled "g6434.pdf." *Id.* Fourteen minutes later, Briner sent Dalmy a separate e-mail with a subject line that referenced issuer PRWC Energy. *Id.* at 18. In the second e-mail, Briner informed Dalmy that "[w]e have another client wanting *to file the attached*," and asked whether she "would . . . be willing to act for this one too?" *Id.* (emphasis added). Attached to the e-mail was a document titled "PRWC - S1 - Draft 5 (2).docx." *Id.*

The Form S-1 for Chum Mining was filed with the Commission on November 30, 2012. Div. Ex. 5 at 1. The Form S-1 for PRWC Energy was filed on December 6, 2012. Div. Ex. 19 at 1. As with Stone Boat's Form S-1, the Forms S-1 for Chum Mining and PRWC Energy listed Dalmy as an "Attorney at Law," provided her contact information, and contained her opinion letter. Div. Ex. 5 at 1, 45-46; Div. Ex. 19 at 1, 44-45.

On Friday, December 7, 2012, Mr. Alper left Dalmy a voicemail message about Chum Mining's Form S-1. Tr. 59-60; Div. Ex. 96 at 2. Dalmy responded by e-mail on Monday, December 10, 2012. Div. Ex. 96 at 2. In her e-mail, Dalmy did not deny that she had provided her opinion letter to Chum Mining and did not deny that Chum Mining was authorized to use the opinion letter. Instead, she did what one would expect her to have done if she had authorized the use of her opinion letter: she provided an e-mail address for Chum Mining and said "We will await receipt of the comment letter from the SEC." *Id.*

The next day, Ms. Posil spoke by phone with Dalmy about Chum Mining. Div. Ex. 96 at 3. Once again, Dalmy did not alert the Commission to any problem, did not deny that she had provided her opinion letter, and did not deny that Chum Mining was authorized to use the opinion letter. Instead, in a follow-up e-mail to Ms. Posil, Dalmy said, "[a]s we discussed, the SEC is authorized to send comment letters to the two email addresses below regarding Chum Mining Group Inc." *Id.* Dalmy then provided her own e-mail address and one for Chum Mining. *Id.*

As noted, Dalmy testified that aside from Stone Boat, she had not authorized Briner to use her opinion letters to support issuers' Forms S-1 and had not authorized him to list her as counsel on the first page of the Forms S-1. Even assuming the truth of this testimony, by December 10, 2012, at the latest, Dalmy was on notice that Briner was using her name and opinion letters in support of certain Form S-1 registration statements. *See* Tr. 62; Div. Ex. 96 at 2.

As also noted, Dalmy was aware of Briner's checkered regulatory history. Putting that history together with his purportedly unauthorized use of Dalmy's opinion letters would have given Dalmy pause *if* she had not authorized his use of her opinion letters. *If* she had not actually authorized his use of those letters, her subsequent actions, discussed *infra*, would be wholly inexplicable. As is discussed, it is partly because of this incongruity that I determine that Dalmy is not credible. In other words, I do not believe her testimony.

The Form S-1 for Eclipse Resources was filed on December 3, 2012. Div. Ex. 8 at 1. At some point between then and December 13, 2012, Corporation Finance contacted Dalmy about Eclipse Resources' Form S-1. *Cf.* Div. Ex. 96 at 4. On December 13, 2012, Dalmy sent Ms. Posil an e-mail in which she said "[t]his email is being sent to authorize the SEC to send comment letters regarding the S-1 registration statement filed by Eclipse Resources Inc. to the email addresses below." *Id.* Dalmy then listed her e-mail address and an e-mail address for Eclipse Resources before saying "[t]hank you and we look forward to receipt of comment letter." *Id.* Once again, Dalmy did not express any surprise about being contacted regarding an issuer's Form S-1. She also did not deny that Eclipse Resources had her permission to use her opinion letter.

Dalmy's exchange with Ms. Posil demonstrates that *if* Dalmy had any doubt about what Briner was doing with her opinion letters, that doubt was erased by December 13, 2012. As noted, however, Dalmy's subsequent conduct leads to only one conclusion: she had no doubt about what was occurring and no objection to Briner's use of her name and opinion letters in connection with the issuers' Form S-1 registration statements.

On December 18, 2012, Briner's assistant, Sandy Vargas, sent Dalmy an e-mail with a copy to Briner. Div. Ex. 95 at 4. The subject line of the e-mail referenced issuers Braxton Resources and Gold Camp. *Id.* Ms. Vargas attached two documents to the e-mail: "g6480- Gold Camp.pdf," and "6481 - Braxton.pdf." *Id.* In the e-mail, Ms. Vargas asked whether Dalmy would "provide us with legal opinion letters for the above Companies" and said "[w]e are looking *to file* as soon as possible." *Id.* (emphasis added). Ms. Vargas then added by way of "a heads up," that "we are currently awaiting approval from the auditors for 4 other Companies that we will be needing legal opinions for. I will forward them to you upon receipt." *Id.*

Dalmy responded to Ms. Vargas's e-mail that same day. Div. Ex. 95 at 1. At this point, Dalmy had communicated with Corporation Finance at least twice regarding registration statements in which Briner was involved. If, as Dalmy testified, she had not authorized Briner to use her opinion letters, one would reasonably expect Dalmy to respond negatively to Ms. Vargas's e-mail. If Dalmy had concerns about Briner's use of her opinion letters, one would have expected her to raise those concerns. Dalmy, however, raised no concerns and instead said that she would be "available" "throughout the holidays -- so just let me know." *Id.* Shortly thereafter, Ms. Vargas sent Dalmy an e-mail, the subject line of which referenced issuer Clearpoint Resources. *Id.* Ms. Vargas attached to the e-mail the file "g6490-Clearpoint.pdf." *Id.* In the e-mail, Ms. Vargas reported "[w]e have just gotten approval for this one as well." *Id.*

Dalmy sent an e-mail to Ms. Vargas two days later on December 20, 2012, copying Briner. *See* Div. Ex. 95 at 21-22. In her e-mail, Dalmy said that she was "finalizing Gold Camp and will send over shortly. Were the other two registration statements *filed*?" *Id.* at 22 (emphasis added).

Ms. Vargas replied:

> Not yet. John has been out of the office, but will be back today to review the final draft *before we send it off for filing.*
>
> Have [I] forwarded you the S1 for Tuba to review yet? I will send it in another window just in case
>
> Thanks for the update!

Div. Ex. 95 at 21 (emphasis added). About fifteen minutes later, Dalmy responded, saying "Thanks -- and let me know if you need me to re-date the opinions re Clearpoint and [the] other one." *Id.* Separately on December 20, 2012, Ms. Vargas forwarded to Dalmy the Form S-1 for issuer Tuba City Gold for Dalmy's review. *Id.* at 5.

The Forms S-1 for Braxton Resources, Clearpoint Resources, Gold Camp Explorations, and Tuba City Gold were all filed with the Commission on January 2, 2013. Div. Exs. 2 at 1, 6 at 1, 10 at 1, 24 at 1. These Forms S-1 listed Dalmy as an "Attorney at Law," provided her contact information, and contained her opinion letter. Div. Exs. 2 at 1, 45-46; 6 at 1, 45-46; 10 at 1, 45-46; 24 at 1, 44-45. Mr. Alper therefore phoned Dalmy about Clearpoint Resources on Monday, January 7, 2013, and about Braxton Resources the next day. Div. Ex. 96 at 5-6. Dalmy responded with nearly identical e-mails in which she provided her e-mail address and the issuers' e-mail addresses and said "the SEC is authorized to send comment letters regarding review of the S-1 registration statement[s]." *Id.*[9] Once again, Dalmy did not raise any issue related to the use of her opinion letters or her representation of the issuers.

Ms. Vargas sent another e-mail to Dalmy on January 23, 2013, copying Briner. Div. Ex. 95 at 7. The subject line of this e-mail referenced issuers Canyon Minerals and Jewel Explorations. *Id.* Ms. Vargas attached two files to the e-mail: "canyon- g6543-1.pdf" and "jewel g6561-1.pdf." *Id.* In the body the e-mail, Ms. Vargas asked Dalmy whether she "[w]ould . . . kindly provide us with Legal Opinion Letters for the above Companies." *Id.* Later that same day, Ms. Vargas sent a similar e-mail to Dalmy, copying Briner, concerning issuers Coronation Mining and Gaspard Mining. *Id.* at 8. The Forms S-1 for Canyon Minerals, Jewel Explorations, Coronation Mining, and Gaspard Mining were all filed on January 25, 2013. Div. Exs. 3 at 1, 7 at 1, 9 at 1, 14 at 1. Each listed Dalmy as "Attorney at Law," and included her contact information and opinion letter. Div. Exs. 3 at 1, 46-47; 7 at 1, 45-46; 9 at 1, 44-45; 14 at 1, 45-46.

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[9] The Division did not present any documentary evidence concerning whether anyone from Corporation Finance contacted Dalmy about the Forms S-1 for Gold Camp or Tuba City. Nonetheless, given Ms. Posil's testimony and the other documentary evidence presented, it is reasonable to infer—and I conclude—that Ms. Posil, Mr. Alper, or one of their colleagues contacted Dalmy about those issuers as well. *See* Tr. 157-58.

Within a few days, Ms. Posil's colleague, Erin Wilson, contacted Dalmy about the Forms S-1 for Gaspard Mining and Jewel Explorations. Div. Exs. 96 at 7-8, 269 at 1. As before, Dalmy responded by providing her e-mail address and an e-mail address for the issuers and by stating that "the SEC is authorized to send comment letters via email to the email addresses reflected below." Div. Exs. 96 at 7-8, 269 at 1. Dalmy did not raise any issue related to the use of her opinion letters or her representation of the issuers.

On Monday, January 28, 2013, Ms. Vargas sent Dalmy three e-mails about five more issuers: Bonanza Resources, CBL Resources, Kingman River Resources, Lost Hills Mining, and Yuma Resources.[10] Div. Ex. 95 at 9-12. That same day, Ms. Vargas sent Dalmy an e-mail, copied to Briner, with a subject line that referenced "[i]nvoices." *Id.* at 13-15. In the e-mail, Ms. Vargas asked whether Dalmy "[w]ould mind sending us your invoice for all of the legal opinion letters you ha[ve] provided, including the 6 you are working on now. I believe there was a total of 17?" *Id.* at 13. She then added, "[o]nce I receive that we can forward payment to you." *Id.*

In a responsive e-mail, Dalmy said:

> 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 Hills Mining
> 5. Yuma Resources
>
> Are we missing one?

Div. Ex. 95 at 14. Ms. Vargas responded, "[s]orry, here is the other one," and forwarded a file titled "Sea- g6586.pdf." *Id.* Given the name of the attached file and the fact that the Form S-1 for Seaview Resources was filed three days later, it is apparent that "the other one" to which Ms. Vargas referred was the Form S-1 for Seaview Resources. Div. Ex. 20 at 1. In addition to the Form S-1 for Seaview Resources, the Forms S-1 for the other five firms in Dalmy's January 28, 2013, e-mail were also filed with the Commission on January 31, 2013. Div. Exs. 1, 4, 15, 18, 25.

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[10] Page 9 of Division Exhibit 95 is an e-mail from Ms. Vargas to Dalmy. The subject line simply references "FW: Re[2]: Legal Counsel." Div. Ex. 95 at 9. Next to the subject line are the handwritten annotations "/Bonanza Resources/ CBL Resources/ Kingman." *Id.* In the e-mail, Ms. Vargas asked Dalmy whether she "[w]ould . . . mind preparing Opinion Letters for the attached?" *Id.* A later e-mail from Dalmy confirms that, as the annotations suggest, Ms. Vargas's e-mail concerned Bonanza Resources, CBL Resources, and Kingman River Resources. *See id.* at 14.

At some point during the following two weeks, Ms. Posil contacted Dalmy about Bonanza Resources, CBL Resources, and Kingman River Resources. *Cf.* Div. Ex. 90 at 1. On February 12, 2013, Dalmy sent Briner an e-mail. *Id.* Instead of telling Briner that he was not authorized to use her name or opinion letters in connection with the issuers' registration statements, Dalmy told him that she "need[ed] the email address for . . . the [three] companies so that [she] c[ould] provide the SEC with authorization to send comment letters." *Id.* Once again, Dalmy's own e-mail shows that she had no objection to the use of her name and opinion letters and that she was instead fully aware of what Briner was doing.

Corporation Finance sent comment letters to six issuers on February 26, 2013. *See* Div. Ex. 91 (referencing this fact). In part, this prompted Dalmy to send Briner an e-mail with the subject line "I NEED TO SPEAK WITH YOU." Div. Ex. 91. Briner replied that he would be "back in [his] office" the next day and asked "[w]hat's a good time." *Id.* Dalmy responded:

> Yeah. Would 5:30 Denver time work? And what should I call you on?
>
> We need to discuss:
>
> 1. All the S-1 registration statements and the first comment re "who prepared this statement" and whether you need assistance -- since you received 6 more comment letters today.
> 2. All corporate books for [an unrelated entity] so I can proceed with name change. Funds should be in tomorrow.
> 3. Jasper Exploration -- SEC examiner called me (he's on a couple of pending registration statements). Said he's been trying to get a hold of company and nothing. What is the status with this company?

Id. As a factual matter, asking Briner "whether [he] need[ed] assistance" because he received comment letters for six of the issuers is inconsistent with Dalmy's assertion that she had not authorized the use of her name and opinion letters in connection with the filing of the issuers' Forms S-1.

In fact, Briner did need assistance. On March 12, 2013, Briner forwarded to Dalmy a comment letter he received from Corporation Finance concerning Seaview Resources.[11] Div. Ex. 95 at 19. The next day, Briner sent Dalmy an e-mail to which he attached Corporation Finance comment letters for Bonanza Resources, CBL Resources, Kingman River Resources, Lost Hills Mining, and Yuma Resources. *Id.* at 20. In the e-mail, Briner asked whether Dalmy would "mind helping with the attached." *Id.* He added that "they will be very similar to the last one I sent," referring his e-mail sent the day before. *Id.* No evidence was submitted reflecting how or whether Dalmy responded to Briner's e-mail. Her February 26, 2013, e-mail to Briner, however, shows that she continued to be a willing participant in the comment process related to

[11] Ms. Posil explained that when personnel in Corporation Finance send comment letters via e-mail, the subject line is automatically generated. Tr. 160-61. The format of the subject line of the e-mail Briner sent to Dalmy on March 12, 2013, is consistent with the format of an e-mail Ms. Posil explained was automatically generated. *See* Tr. 160-61; Div. Ex. 95 at 19-20.

issuers' registration statements. And the fact that Briner forwarded comment letters on March 13, 2013, shows that Dalmy did not object after receiving the comment letter the day before for Seaview Resources.

On June 17, 2013, the Division of Enforcement sent subpoenas to all seventeen post-Stone Boat issuers. *See* Div. Ex. 85. Dalmy received courtesy copies of all seventeen subpoenas and cover letters sent to the issuers. *Id.* The subpoenas got Briner's and Dalmy's attention.

On June 25, 2013, Clearpoint applied to withdraw its registration statement. *Clearpoint Res. Inc.*, Securities Act Release No. 9411, 2013 SEC LEXIS 1949 (July 3, 2015). The next day, Braxton Resources also applied to withdraw its registration statement. *Braxton Res. Inc.*, Securities Act Release No. 9410, 2013 SEC LEXIS 1948 (July 3, 2013).

On June 27, 2013, Dalmy called Division counsel and left a voicemail message. *See* Div. Exs. 86, 87. In the message, she said:

> Hi [Division counsel], 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.

Div. Ex. 87 (emphasis added). As the prior recitation of the facts shows, the above emphasized language was false or seriously misleading.

The Commission denied Braxton Resources' and Clearpoint Resources' applications to withdraw their registration statements on July 3, 2013. *See Clearpoint Res. Inc.*, 2013 SEC LEXIS 1949; *Braxton Res. Inc.*, 2013 SEC LEXIS 1948. Two days later, Dalmy e-mailed Briner. Resp. Ex. 1. In her e-mail, she said:

> 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.
>
> 2. Sync2 – need those items listed in last email especially the resignation and the waiver/settlement from Moore. Tim is beyond furious right now and understandably so.

Id.

Between July 5 and July 8, 2013, fourteen of the remaining issuers—all but Stone Boat and Canyon Minerals—applied to withdraw their registration statements. The Commission denied all of those applications on July 17, 2013.[12]

In February 2014, the Commission instituted proceedings against all of the issuers, including Stone Boat. *See La Paz Mining Corp.*, Admin. Proc. File Nos. 3-15715 through 3-15734, 2014 SEC LEXIS 1009, at *1 (Mar. 20, 2014). Within a week, Dalmy issued a press release in which she said she planned to "pursue civil action against" Briner and asserted "that she had no knowledge of the use of her name or identity associated with the filing of the [issuers'] registration statements and opinions related thereto." Div. Ex. 88 at 1. She also said she "had no general knowledge of the use of my name or opinion until contacted by the . . . Commission during 2013." *Id.*[13]

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[12] *See Bonanza Res. Corp.*, Securities Act Release No. 9422, 2013 SEC LEXIS 2057 (July 17, 2013); *CBL Res. Inc.*, Securities Act Release No. 9423, 2013 SEC LEXIS 2058 (July 17, 2013); *Chum Mining Group Inc.*, Securities Act Release No. 9424, 2013 SEC LEXIS 2059 (July 17, 2013); *Coronation Mining Corp.*, Securities Act Release No. 9425, 2013 SEC LEXIS 2060 (July 17, 2013); *Eclipse Res. Inc.*, Securities Act Release No. 9426, 2013 SEC LEXIS 2061 (July 17, 2013); *Gaspard Mining Inc.*, Securities Act Release No. 9432, 2013 SEC LEXIS 2067 (July 17, 2013); *Gold Camp Explorations Inc.*, Securities Act Release No. 9427, 2013 SEC LEXIS 2062 (July 17, 2013); *Goldstream Mining Inc.*, Securities Act Release No. 9428, 2013 SEC LEXIS 2063 (July 17, 2013); *Jewel Explorations Inc.*, Securities Act Release No. 9429, 2013 SEC LEXIS 2064 (July 17, 2013); *Kingman River Res. Inc.*, Securities Act Release No. 9430, 2013 SEC LEXIS 2065 (July 17, 2013); *Lost Hills Mining Inc.*, Securities Act Release No. 9431, 2013 SEC LEXIS 2066 (July 17, 2013); *Seaview Res. Inc.*, Securities Act Release No. 9419, 2013 SEC LEXIS 2054 (July 17, 2013); *Tuba City Gold Corp.*, Securities Act Release No. 9420, 2013 SEC LEXIS 2055 (July 17, 2013); *Yuma Res. Inc.*, Securities Act Release No. 9421, 2013 SEC LEXIS 2056 (July 17, 2013).

[13] Dalmy testified that these last two sentences quoted from her press release were true because, as of the day each Form S-1 was filed, she did not know the issuers were using her name and opinion letters and did not find out until contacted by Corporation Finance. Tr. 84-86. I do not believe Dalmy's convenient interpretation of her press release. The evidence shows that she knew what Briner was doing.

On March 20, 2014, the Commission's Chief Administrative Law Judge issued an initial decision suspending the registration statements of all eighteen issuers whose Forms S-1 were supported by Dalmy's opinion letters. *See La Paz Mining Corp.*, 2014 SEC LEXIS 1009, at *9-11. The initial decision was based on the determination that the issuers' registration statements contained "untrue statements of material fact and omitted to state material facts necessary to make the statements not misleading." *Id.* at *9. The Commission issued a final order suspending the registration statements on May 2, 2014. *La Paz Mining Corp.*, Securities Act Release No. 9582, 2014 SEC LEXIS 4548, at *1-2.

The Commission issued Dalmy an investigative subpoena in April 2014, requiring her to appear for testimony the following month. Div. Ex. 89 at 3. I discuss relevant portions of Dalmy's subsequent investigative testimony below. *See* Div. Ex. 92.

1.4 Dalmy authorized Briner to use her name and opinion letters

As noted, the primary factual question in this matter is whether Dalmy authorized Briner to use her name and opinion letters for the seventeen post-Stone Boat registration statements. For several reasons, I resolve that question against Dalmy.

Dalmy's own words and omissions show that she authorized the use of her name and opinion letters with regard to the seventeen post-Stone Boat issuers. First, despite multiple opportunities, Dalmy never raised any concern during any communication with Corporation Finance staff. To the contrary, she repeatedly said that the Commission was "authorized to send comment letters" to her. Div. Ex. 96. If Dalmy had not actually authorized the use of her opinion letters, there is no legitimate reason that she would have done this, over and over again.

Second, Dalmy repeatedly communicated with Ms. Vargas via e-mails on which Briner was copied. She never complained about the use of her opinion letters, even though she knew they were being used. Instead, she repeatedly offered her assistance. In this regard, two exchanges are particularly telling.

The first occurred on December 18, 2012, which was after Dalmy had been contacted by Corporation Finance staff about the Forms S-1 for several issuers. On that day, Ms. Vargas asked Dalmy about "provid[ing] . . . opinion letter[s] for" Braxton Resources and Gold Camp. Div. Ex. 95 at 4. Ms. Vargas also gave Dalmy "a heads up," that the need for opinion letters for four more issuers would soon arise. *Id.* Rather than complain, Dalmy helpfully responded that she would be "available" "throughout the holidays" and that Ms. Vargas should "just let [Dalmy] know." *Id.* at 1.

The second telling exchange happened on January 28, 2013. On that day, Ms. Vargas sent Dalmy a number of e-mails about various issuers, *see* Div. Ex. 95 at 9-12, before asking whether Dalmy "[w]ould mind sending us your invoice for all of the legal opinion letters you ha[ve] provided, " *id.* at 13. Dalmy quickly responded that she "w[ould] do so. I will send a separate invoice for each company." *Id.* at 14. She then helpfully listed the issuers for which she was preparing opinion letters before asking whether she was "missing one?" *Id.*

If Briner had actually filed the issuers' Forms S-1 with Dalmy's opinion letters without Dalmy's permission, Dalmy would not have reacted in the above manner in response to Ms. Vargas's e-mails. She certainly would not have responded positively. She would not have actively assisted Briner and Ms. Vargas in filing more registration statements, nor would she have any reason to believe she was entitled to payment. I therefore do not believe the Dalmy did not authorize Briner's use of her name and opinion letters.

Dalmy attempted to discount the importance of any e-mail she exchanged with Ms. Vargas, saying that Ms. Vargas had no authority to file documents with the Commission. Tr. 43, 52. Dalmy thus would not have "imagine[d]" that Ms. Vargas would have caused documents to be filed with the Commission. Tr. 43. Dalmy made these statements with an air of incredulity, as if it would be impossible to imagine that sending her opinion letters to Ms. Vargas would result in them being filed with the Commission.

Of course, it is easy to imagine—especially because it actually happened—Briner or Ms. Vargas compiling documents and sending them to a third party EDGAR agent who formatted them and filed them with the Commission. *See* Div. Ex. 95 at 5-6. Ms. Vargas's alleged lack of authority to file documents with the Commission is thus a chimera because whether Dalmy thought Ms. Vargas had such authority, Dalmy knew that opinion letters she sent to Ms. Vargas were, in fact, repeatedly filed with Commission in connection with the issuers' Forms S-1.

1.5 Dalmy's denials are inconsistent and contradicted by objective evidence

The objective evidence notwithstanding, Dalmy claims she had no idea Briner intended to use her opinion letters for the seventeen post-Stone Boat issuers. As noted, Dalmy's primary line of defense was that her letters were drafts and that she had no idea Briner would file her letters in connection with the issuers' Forms S-1. She also says that once she realized what was happening, she phoned Briner and furiously told him to fix the problem. There is little if any evidence to support Dalmy's testimony.

As an initial matter, Dalmy's testimony is the only evidence that she called Briner and angrily told him to withdraw the registration statements. *See* Tr. 57-66. Critically, because no angry conversation occurred via e-mail, there is no objective evidence that supports Dalmy's testimony. This is significant because Dalmy's e-mails contradict her testimony. And Dalmy's testimony on other subjects is inconsistent with the objective, documentary evidence, making her testimony suspect in general.

Moreover, Dalmy could not consistently explain when the allegedly angry conversation occurred. When she gave investigative testimony in May 2014, Dalmy said that February 12, 2013, was when she first realized there was a problem. Div. Ex. 92 at 14-17. She claimed that she was furious and phoned Briner and told him to withdraw the Forms S-1. *Id.* at 14-15. To support this assertion, she pointed to the e-mail she sent *two weeks* later on February 26, 2013, that contained the subject-line "I NEED TO SPEAK WITH YOU." *Id.* at 15; *see* Div. Ex. 91.

During the hearing, Dalmy changed her testimony and said that she realized there was a problem by December 10, 2012. Tr. 58, 60. She testified that her angry conversation with

Briner first occurred in December 2012 instead of in February 2013. Tr. 57, 60. Of course, Dalmy was forced to change her testimony because February 12, 2013, could not have been when she first realized Briner was using her opinion letters. By February 2013, Dalmy had communicated with Ms. Vargas and Corporation Finance personnel too many times to credibly claim she did not know until February 2013 that Briner was using her opinion letters. But this means that, contrary to her investigative testimony, Div. Ex. 92 at 15, her February 26, 2013 "I NEED TO SPEAK WITH YOU" e-mail does not show that she was angry with Briner after having *just* learned that he was using her opinion letters.

This raises another problem that relates to the February 26, 2013 "I NEED TO SPEAK WITH YOU" e-mail. Recall that in this e-mail, Dalmy told Briner that they "need[ed] to discuss" (1) the issuers' Forms S-1, (2) "the first comment re 'who prepared this registration statement[,]'" and (3) "whether you need assistance -- since you received 6 more comment letters today [from Corporation Finance]." Div. Ex. 91. As noted, during her investigative testimony, Dalmy said this e-mail showed that she was furious with Briner on discovering what he was doing. Div. Ex. 92 at 15. The e-mail itself, however, does not support this assertion. Instead, it suggests that Dalmy thought she and Briner needed to get their story straight about who prepared the Forms S-1.

Dalmy also testified during the investigation that she was being "sarcastic" in the February 26, 2013 e-mail when she asked whether Briner needed assistance with the additional comment letters. Div. Ex. 92 at 15, 16. During her hearing testimony, Dalmy said instead that she was being "sarcastic" in her e-mail to Ms. Vargas on January 28, 2013, when she said she would "send a separate invoice for each company" for which she provided an opinion letter. Tr. 51; Div. Ex. 95 at 14. Dalmy claimed that she also left Briner a "sarcastic" voicemail wondering what Ms. Vargas was talking about, in light of the alleged fact that Dalmy had no fee arrangement with Briner or the issuers. Tr. 52-53.

But the word "sarcastic" is not a magic wand that can be waved to make words mean other than what one would normally expect. Saying an e-mail was intended to be sarcastic does not make it so and labeling an e-mail as sarcastic does not mean Dalmy can avoid the obvious import of her words. Absent some evidence to support Dalmy's assertion that she was simply being sarcastic, I cannot credit her weak explanation for what she plainly intended.

In her post-hearing brief, Dalmy says that when she sent her "sarcastic" e-mail in January 2013, she "did not know Briner was involved in a fraud, so it did not occur to [her] to be more circumspect about making flippant sarcastic comments to someone." Resp. Br. at 6. Dalmy's claimed lack of knowledge in January 2013 is belied by her testimony that by December 10, 2012, she knew that Briner had used her opinion letters without authorization. Tr. 58, 60. Her claimed lack of knowledge is also belied by her multiple exchanges with Corporation Finance personnel about various issuers' Forms S-1 and her opinion letters. Even if Dalmy did not initially know what Briner was doing—and given all that transpired, I do not believe that she did not know—it is impossible for her to have been unaware in late January 2013 of what Briner was doing. Dalmy's continued inability to settle on a date by when she first realized Briner was using her opinion letters only adds weight to my determination that her assertions are not credible.

Dalmy's claim that her opinion letters were drafts is further belied by that fact that the letters bore no indication, such as an electronic watermark, that they were intended to only be used as drafts. *See* Tr. 45. Moreover, neither Briner nor Ms. Vargas ever asked for a draft opinion letter. Instead, they asked for opinion letters and their requests were following shortly thereafter by the actual filing of the relevant Form S-1 together with Dalmy's opinion letter. And saying the letters were intended to be drafts is inconsistent with Ms. Vargas's, Briner's, and Dalmy's references to "*filing*" the Forms S-1. *See, e.g.*, Div. Ex. 95 at 16, 18, 21-22.

In response to this point, Dalmy says that she and Ms. Vargas used the term "file" idiomatically. According to Dalmy, when they used the term "file," they were referring to submission to the "EDGAR Agent" who would then submit the document via EDGAR. Tr. 43-45. I do not believe this aspect of Dalmy's testimony. First, it is nonsensical that there would be a "filing" with an agent prior to a "filing" with the Commission. Second, the fact that Briner repeatedly caused the issuers' Forms S-1 to be filed with the Commission would have led Dalmy to reexamine her belief as to the definition of this term, if she honestly held it. Third, during her testimony, Dalmy repeatedly used the terms "file" or "filed" in relation to the submission of documents to the Commission. *See* Tr. 58, 62-63, 65.

Fourth, Dalmy's course of conduct with Ms. Vargas and Briner shows that Dalmy's claim could not be true. In late November 2012, Briner sent Dalmy two e-mails in quick succession. In the first, which concerned Chum Mining, he asked her to serve as counsel and provide an opinion letter. Div. Ex. 95 at 17. The second e-mail concerned PRWC Energy's Form S-1. *Id.* at 18. In that e-mail, Briner attached a draft Form S-1, told Dalmy that "[w]e have another client wanting to *file* the attached," and asked whether she "would . . . be willing to act for this one[,] too?" *Id.* (emphasis added). Consistent with what common sense suggests the term "file" means, Briner then caused PRWC Energy's Form S-1 to be filed with the Commission about a week later. Div. Ex. 19 at 1. If Dalmy actually thought "file" meant only submission to the EDGAR agent, the fact that PRWC's Form S-1 was filed with the Commission would have alerted her that she was mistaken. In the very least, it should have caused her to inquire of Briner.

Dalmy, however, asked for no clarification on December 18, 2012, when Ms. Vargas asked for opinion letters for Braxton Resources and Gold Camp because she and Briner were "looking *to file* as soon as possible." Div. Ex. 95 at 4 (emphasis added). Two days later, Dalmy said in an e-mail that she was "finalizing Gold Camp and [would] send [it] over shortly. Were the other two registration statements *filed*?" *Id.* at 21-22 (emphasis added). Ms. Vargas replied that the other two Forms S-1 had "[n]ot yet" been filed, because Briner had "been out of the office." *Id.* at 21. She added, however, that on his return, Briner would "review the final draft before we *send it off for filing*." *Id.* If filing actually meant sending a document to the EDGAR agent but not having the agent submit the document to the Commission, Ms. Vargas would not have said "before we send it off for filing." Instead, she would have said "before we file it." "[S]end[ing] it off for filing" suggests submission to a third party in order to have the third party file it.

When Dalmy replied shortly thereafter to Ms. Vargas's e-mail, Dalmy asked whether Ms. Vargas "need[ed] [Dalmy] to re-date the opinion[]" letters for two of the issuers. Div. Ex. 95 at

21. If Dalmy actually thought she was submitting drafts for submission to the EDGAR agent, this latter comment would not make sense. She testified that she would only take the additional, presumably time-consuming steps of "conduct[ing] due diligence and obtain[ing] engagement letters" after she and Briner decided which issuers would file Forms S-1. Tr. 25, 38, 48-49. There would therefore be no need to re-date anything unless Dalmy thought the Forms S-1 would be filed with the Commission in the near future.

Even if Dalmy once thought the term "file" referred only to submission to the EDGAR agent—and I do not believe she ever thought that—she could not reasonably have retained that belief in dealing with Ms. Vargas and Briner. Their use of the word "file" was followed by actual filings with the Commission.

Dalmy's credibility was also hurt because her story about what the term "filing" meant forced her to be intentionally vague during her testimony about the concept of filing documents with the Commission via EDGAR. During her testimony, Dalmy said that she "[a]bsolutely" "perceive[d] a distinction between filing something on EDGAR and filing something with the Commission." Tr. 137. Division counsel attempted to clarify Dalmy's testimony. On re-direct, the following colloquy occurred:

> Q I am going to try to clarify what I think might be confusion. I am hoping that I can.
> Ms. Dalmy, when you approved -- when you submitted the Stone Boat, your Stone Boat opinion and consented to have it filed, you understood that it was going to be electronically filed, correct?
> A Yes.
> Q And you understood that by that that means it is filed on something called EDGAR, correct?
> A When the EDGAR agent actually submits it.
> Q But you understood that by filing with the SEC, that is the same thing as filing on EDGAR? That is the same thing?
> A *Yes, that is the end result.*
> Q I think --
> A When the EDGAR agent pushes that button or whatever they do and it gets filed, it is electronically filed on the EDGAR database.
> Q Okay. There is no other filing with the SEC, it is on the EDGAR database and that means it is filed with the SEC?
> A That's correct.

Tr. 139-40 (emphasis added). Although Dalmy appeared to relent on questioning by Division counsel, in her post-hearing brief, Dalmy again attempts to suggest that there is a distinction where none exists. Resp. Br. at 2 ("I prepared drafts and transmitted those drafts for submission to EDGAR to be formatted—not for filing with the SEC."). Given that Dalmy "has extensive experience in the preparation and filing of registration statements, including filings on Form[] S-1," Div. Ex. 97 at 3, her attempts to obfuscate support my determination that her testimony was not believable.

In response to the obvious question of why, if Briner lacked authorization to use Dalmy's opinion letters, she failed to alert Ms. Posil or Mr. Alper to any problems, Dalmy testified that she did not feel she had the authorization to withdraw the issuers' registration statements. Tr. 114. But whether she had such authorization is irrelevant. She did not require anyone's authorization to tell Ms. Posil there was a problem with her having been listed as the attorney for the issuers and responsible for the registration statements' opinion letters. If Briner actually lacked Dalmy's permission to use her opinion letters, telling Corporation Finance of this fact would have been the only reasonable thing to do. By saying she lacked authorization to withdraw the Forms S-1, Dalmy was simply setting up a straw man.

Further, it is significant that Dalmy told Corporation Finance personnel that she was authorized to receive comment letters. If the issuers' use of her opinion letters was a fraud and the issuers were not her clients, it is inexplicable why Dalmy would tell Ms. Posil or Mr. Alper that they could send comment letters to her. Dalmy was surely aware that by responding in the manner that she did, she was intimating that the issuers' use of her opinion letters was authorized and legitimate.

Dalmy testified that she was "caught . . . off guard" when she was contacted by Corporation Finance personnel in December 2012. Tr. 57. She said she phoned Briner, who told her that three or four registration statements were "inadvertently filed during the holiday season." Tr. 57. According to Dalmy, she told Briner to withdraw the registration statements and he agreed to do so. Tr. 57. She said that in the meantime, he asked her to "go ahead and on behalf of the compan[ies] get the comment letter[s]." Tr. 57; *see* Tr. 61. Dalmy testified that Briner told her that he planned to withdraw the registration statements "based upon receipt of the comment letter[s]." Tr. 65. Dalmy said that she agreed with Briner's request and provided "perfunctory response[s] to" Corporation Finance in order "to get the comment letters." Tr. 62.

None of Dalmy's e-mail exchanges with Briner and Ms. Vargas support this version of events. To the contrary, the e-mails show Dalmy was a willing participant in Briner's scheme. On December 18, 2012, Ms. Vargas sent Dalmy an e-mail asking for opinion letters for Braxton Resources and Gold Camp because "[w]e are looking to file as soon as possible." Div. Ex. 95 at 4. Ms. Vargas also said she would need opinion letters for four other issuers. *Id.* If Dalmy actually believed that three or four registration statements were "inadvertently filed" and was simply going along with Briner's request as to those already-filed registration statements, this would have been the time for her to stop the bleeding. Indeed, without her opinion letters, no additional registration statements could be "inadvertently filed." Instead of putting a stop to the "inadvertent[] fil[ings]," however, Dalmy responded to Ms. Vargas that she would be "available" "throughout the holidays . . . so just let me know." *Id.* at 1. Dalmy was effectively saying that she knew Briner and Ms. Vargas had filed registration statements supported by her opinion letters and that she was ready to help them by providing more opinion letters so they could file more registration statements. And a month later, Dalmy was happily working on opinion letters for six more issuers. *See id.* at 14. Dalmy's testimony that she was "caught . . . off guard" and was simply going along with Briner's request is thus not believable. Tr. 57; *see generally* Tr. 57-65.

Finally, Dalmy notes that with the exception of Stone Boat, there was no evidence that she ever sent invoices for work on any of the issuers' registration statements. Resp. Br. at 6. She argues that this shows she was being sarcastic with Ms. Vargas in January 2013, and was not a party to Briner's fraud. *Id.* Dalmy's argument is unconvincing because her January 28, 2013 statement that she would send invoices to Ms. Vargas is evidence that she later sent invoices. *Cf. Mut. Life Ins. v. Hillmon*, 145 U.S. 285, 295-96 (1892) (a declarant's statement of intent to take a particular action constitutes evidence that the declarant later took the action). Additionally, Dalmy testified that she did not remember when she was paid for her work on Stone Boat but that it might have been "a couple of months after the filing." Tr. 48. If that was the case, it is not difficult to imagine why there would be no documentary evidence that Briner paid Dalmy for the seventeen other issuers. By the time she might otherwise have been paid, it was clear that the issuers had a problem with the Commission.

In light of the foregoing, I conclude that Dalmy is not credible. I also conclude that she authorized Briner to use her name and opinion letters in connection with the Form S-1 registration statements of all eighteen issuers.

1.6 There is insufficient evidence that Dalmy failed to adequately investigate Stone Boat

The second factual issue concerns whether Dalmy adequately investigated Stone Boat before issuing her opinion letter. This is a close question. Were the standard something less than a preponderance of the evidence, I would rule in the Division's favor based on Dalmy's lack of credibility and Briner's regulatory history. Applying preponderance of the evidence, I find that the Division failed to carry its burden.

The Division did not present any evidence concerning the legitimacy of Stone Boat's Form S-1 or Dalmy's opinion letter. At least with respect to the other seventeen issuers, Dalmy admitted that she conducted no investigation. Her opinion letters for those issuers, therefore, had to be false. But with regard to Stone Boat, there was no evidence that Stone Boat's Form S-1 or Dalmy's opinion letter were fraudulent. Additionally, Dalmy testified that she conducted an investigation and that she authorized the use of her opinion letter. Tr. 20, 46.

The Division argues that because Dalmy was not credible as to the seventeen post-Stone Boat issuers, I should infer, based on Dalmy's admitted failure to investigate those issuers, that she similarly failed to investigate Stone Boat. Div. Br. at 20 n.18. The drawing of reasonable inferences lies at the core of a factfinder's job. *See Siewe v. Gonzales*, 480 F.3d 160, 167 (2d Cir. 2007). "[D]rawing . . . a fair inference inevitably entails some measure of speculation." *Id.* An inference crosses the line into mere speculation, however, "when there is a complete absence of probative facts to support" a given conclusion. *Lavender v. Kurn*, 327 U.S. 645, 653 (1946). Such is the case here. Absent some affirmative evidence, I have no basis to conclude that the Stone Boat opinion letter was false.

It is true that the Commission has suspended the effectiveness of Stone Boat's registration statement. *La Paz Mining Corp.*, 2014 SEC LEXIS 1009, at *9-11. That suspension, however, resulted from a proceeding in which Stone Boat defaulted. *Id.* at *3. I

therefore cannot give the Commission's decision weight with respect to the determination of whether Dalmy committed a violation. *Cf. Don Warner Reinhard*, Exchange Act Release No. 61506, 2010 SEC LEXIS 1010, at *14 (Feb. 4, 2010) (noting that "the Supreme Court has held that '[i]n the case of a judgment entered by . . . default, none of the issues is actually litigated. Therefore [issue preclusion, or collateral estoppel] does not apply with respect to any issue in a subsequent action.'") (quoting *Arizona v. California*, 530 U.S. 392, 414 (2000)). I therefore conclude that the Division did not carry its burden to show that Dalmy failed to investigate Stone Boat before issuing her opinion letter.

ISSUES

1. Section 17(a)(1) bars "employ[ing] any device, scheme, or artifice to defraud" "in the offer or sale of any securities." Section 17(a)(3) prohibits "engag[ing] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser" "in the offer or sale of any securities." Filing multiple false opinions letters in support of registration statements can fall within the terms of Section 17(a)(1) and (3). Dalmy submitted seventeen false opinion letters in support of the seventeen post-Stone Boat registration statements. Did Dalmy violate 17(a)(1) and (3)?

2. In addition to prohibitions on fraudulent conduct found in Section 17(a)(1) and (3), Section 17(a)(2) prohibits "obtain[ing] money or property by means of any untrue statement of a material fact" "in the offer or sale of any security." While Dalmy received money for the Stone Boat opinion letter she submitted, the Division never showed that the Stone Boat opinion letter was false. Did Dalmy violate Section 17(a)(1), (2), or (3) when she submitted the Stone Boat opinion letter?

DISCUSSION AND CONCLUSIONS OF LAW

2.1 Legal Principles

The OIP charges Dalmy with violations of Section 17(a)(1), (2), and (3) of the Securities Act. Section 17(a) of the Securities Act provides that:

> It shall be unlawful for any person in the offer or sale of any securities . . . by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—
>
> (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). In order to demonstrate liability under paragraph (1), the Division must show that Dalmy acted with scienter. *John P. Flannery*, Securities Act Release No. 9689, 2014 SEC LEXIS 4981, at *31 (Dec. 15, 2014). Liability under paragraphs (2) and (3) can be predicated on a showing of negligence. *Id.*

Section 17(a)(1), which prohibits the employment of "any device, scheme, or artifice to defraud," covers "all scienter based, misstatement-related misconduct." *John P. Flannery*, 2014 SEC LEXIS 4981, at *58. Because a single misstatement qualifies as "a 'device' or 'artifice' to defraud," *id.* at *62, 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 *58-59. "[L]iability" under Section 17(a)(2) "turns on whether one has obtained money or property 'by means of' an untrue statement." *Id.* at *33. Finally, Section 17(a)(3) premises liability on "any transaction, practice, or course of business." 15 U.S.C. § 77q(a)(3). "[W]hile a misstatement (or misstatement-related activity) may fairly be characterized as an 'act,' a misstatement is not a 'transaction.'" *John P. Flannery*, 2014 SEC LEXIS 4981, at *61. As a result, subsection (a)(3) does not apply to "'acts' . . . that are not 'transactions,' 'practices' or 'courses of business.'" *Id.* at *61-62.

2.2 *With respect to the seventeen post-Stone Boat issuers, Dalmy violated Section 17(a)(1) and (3)*

Dalmy violated paragraphs (1) and (3) of Section 17(a) with respect to the seventeen post-Stone Boat issuers.[14] As an initial matter, the Division met the threshold requirements in Section 17(a) that the conduct in question occur "in the offer or sale of any securities" and involved an instrumentality of interstate commerce or the mails used "directly or indirectly" to commit the actions described in paragraphs (1) through (3). 15 U.S.C. § 77q(a).

An offer "include[s] 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). This definition applies broadly and does not require "injury . . . to a purchaser." *United States v. Naftalin*, 441 U.S. 768, 773 (1979). Because the definition applies broadly, "omissions and misstatements made in securities registration statements" fall with the ambit of the term "in the offer or sale of any securities." *SEC v. Brown*, 740 F. Supp. 2d 148, 163 (D.D.C. 2010); *see SEC v. Benson*, 657 F. Supp. 1122, 1130 (S.D.N.Y. 1987). False statements in an opinion letters filed with a registration statement are therefore "in the offer or sale of any security."

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[14] The Division does not claim that Dalmy violated Section 17(a)(2) with respect to the seventeen post-Stone Boat issuers. *Cf.* Div. Br. at 22. To show liability under Section 17(a)(2), the Division would have been required to show that Dalmy "obtain[ed] money or property by means of any untrue statement of a material fact or any omission." 15 U.S.C. § 77q(a)(2). It presented no evidence that Dalmy received money or property in connection with her post-Stone Boat opinion letters and Dalmy denied being paid for those opinion letters. Tr. 138.

Dalmy used e-mail to send her opinion letters from her office in Denver to Briner and Ms. Vargas in Vancouver. This alone was sufficient to meet the interstate commerce requirement. *See United States v. Napier*, 787 F.3d 333, 345 (6th Cir. 2015); *United States v. Barlow*, 568 F.3d 215, 220-21 & n.18 (5th Cir. 2009). Additionally, Briner or Ms. Vargas also forwarded Dalmy's opinion letters with the Forms S-1 to a third party who electronically transmitted them through EDGAR to the Commission in Washington, D.C. These actions also satisfied the interstate commerce requirement. *See Rita J. McConville*, Exchange Act Release No. 51950, 2005 SEC LEXIS 1538, at *38 & n.41 (June 30, 2005). Finally, Dalmy later communicated with Corporation Finance personnel via phone and e-mail about the Forms S-1 as part of the comment process leading toward the possible effectiveness of the Forms S-1.[15] The interstate commerce requirement is thus met.

Because the threshold requirements have been met, the question for purposes of subsection (a)(1) is whether by providing Briner with opinion letters, Dalmy "employ[ed] any device, scheme, or artifice to defraud." Because a single misstatement qualifies as "a 'device' or 'artifice' to defraud," *John P. Flannery*, 2014 SEC LEXIS 4981, at *62, any single misstatement in Dalmy's opinion letters could potentially violate Section 17(a)(1). Here, Dalmy admitted that she conducted no investigation into the seventeen post-Stone Boat issuers. She thus made six false statements in each of the opinion letters when she said that she (1) "ha[d] acted as special legal counsel for [the issuer] in connection with the preparation of a registration statement on Form S-1"; (2) had conducted an investigation and examined certain listed corporate records; (3) had "reviewed the corporate proceedings of [the issuer] with respect to the authorization of the issuance of the shares of Common Stock"; (4) had "relied . . . upon representations and certificates of the officers of the [issuer]"; (5) was "providing [her] opinion . . . in accordance with Item 601(b)(5) of Regulation S-K . . . under the Securities Act"; and (6) was "of the opinion that the shares of Common Stock held by the Selling Shareholder are validly issued, fully paid and non-assessable."[16] *E.g.*, Div. Ex. 1 at 50-51.

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15 The mails and interstate commerce element has always been "broadly construed." *SEC v. Softpoint, Inc.*, 958 F. Supp. 846, 861, 865 (S.D.N.Y. 1997). As a result, the Division "'need not'" show that Dalmy's use of jurisdictional means is "'central to the fraudulent scheme.'" *Franklin Sav. Bank of New York v. Levy*, 551 F.2d 521, 524 (2d Cir. 1977) (quoting *United States v. Cashin*, 281 F.2d 669, 673-74 (2d Cir. 1960)). Instead, that use "may be entirely incidental to" the scheme. *Id.* Because participation in the comment process was more than incidental to Dalmy's part in the scheme, but rather was a central feature of her part of the scheme, her communications with Corporation Finance personnel via phone and e-mail, which are both instrumentalities of interstate commerce, suffice to meet the interstate commerce requirement. *Cf. United States v. Brown*, 555 F.2d 336, 340 (2d Cir. 1977) (holding that "send[ing] confirmation slips" *after* securities were purchased was enough "to support federal jurisdiction").

16 Having conducted no investigation, Dalmy had no "reasonable basis" for her opinion. *Weiss v. SEC*, 468 F.3d 849, 855 (D.C. Cir. 2006). Her stated opinion that the issuers' shares were "validly issued, fully paid and non-assessable" was therefore false. *See id.*

In making these false statements, Dalmy acted with scienter. I have resolved, adverse to Dalmy, the factual dispute about whether she authorized Briner's use of her opinion letters. She did. Dalmy knew she had not done the things she asserted she had done. She thus knew she had no basis for making the statements in her opinion letters because she had conducted no investigation, not reviewed any corporate documents, and not communicated with any officers of the issuers. The Division has therefore shown that Dalmy acted with scienter with respect to the seventeen post-Stone Boat issuers.

Dalmy's false statements were material. A misstatement is material if "'there [is] a substantial likelihood that the disclosure of the omitted fact would have been viewed by [a] reasonable investor as having significantly altered the "total mix" of information made available.'" *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). The point of having an attorney submit an opinion letter in support of a registration statement is for investors to rely on that opinion. Indeed, an opinion letter is required in order to file a registration statement. 15 U.S.C. § 77aa(29); 17 C.F.R. § 229.601(a)(1), (b)(5). And until a registration statement becomes effective, the issuer cannot publicly sell its shares. 15 U.S.C. § 77e(a).

In sum, Dalmy made multiple material misstatements with scienter in the offer of seventeen securities. She therefore violated Section 17(a)(1) with respect to the seventeen post-Stone Boat issuers. *See John P. Flannery*, 2014 SEC LEXIS 4981, at *58-61.

With respect to paragraph (3) under Section 17(a), the question is whether Dalmy "engage[d] in any transaction, practice, or course of business which operate[d] or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(3). While "Section 17(a)(3) does not encompass those 'acts' . . . that are not 'transactions,' 'practices' or 'courses of business,'" "*repeatedly* mak[ing] or draft[ing] [material] misstatements over a period of time may well" be conduct that would qualify as "a fraudulent 'practice' or 'course of business.'" *John P. Flannery*, 2014 SEC LEXIS 4981, at *61-62.

My finding of liability under subsection (a)(1) largely resolves the question of Dalmy's liability under subsection (a)(3). Dalmy acted with scienter and her false statements were material. Had Dalmy authored only one false opinion letter, it might be that she could argue that she is not liable under subsection (a)(3). *But see John P. Flannery*, 2014 SEC LEXIS 4981, at *63 ("a transaction that itself operated or would operate as a fraud certainly could serve as the basis for primary liability"). But Dalmy authored seventeen opinion letters containing material false statements as part of a scheme involving seventeen issuers. By "*repeatedly* mak[ing] or draft[ing] [material] misstatements over a period of" two months, Dalmy engaged in "a fraudulent 'practice' or 'course of business.'" *Id.* at *62. She is therefore liable under Section 17(a)(3) with respect to the seventeen post-Stone Boat issuers.

2.3 The Division did not carry its burden with respect to Dalmy's Stone Boat opinion letter

As a factual matter, I determined that the Division did not show that Dalmy failed to investigate Stone Boat or that the Stone Boat opinion letter was illegitimate. *See supra* § 1.6.

This means that it failed to demonstrate that Dalmy made a material misstatement as to the Stone Boat Form S-1, and thus failed to show that Dalmy is liable under Section 17(a)(1), (2), or (3) with respect to Stone Boat.

SANCTIONS

The Division requests a cease-and-desist order, disgorgement of $1,750, and civil monetary penalties totaling $1,350,000. Div. Br. at 21-28. As is discussed below, Dalmy is ordered to cease-and-desist from committing or causing violations of Section 17(a)(1) and (3) of the Securities Act and is ordered to pay third-tier penalties totaling $680,000.

3.1 Sanction Considerations

In determining the appropriateness of any remedial sanction in this proceeding, I am guided by the public interest factors set forth in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *see John P. Flannery*, 2014 SEC LEXIS 4981, at *138 & n.184. These factors include:

> the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

John P. Flannery, 2014 SEC LEXIS 4981, at *138. The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Ralph W. LeBlanc*, Exchange Act Release No. 48254, 2003 SEC LEXIS 1793, *26 (July 30, 2003). Additionally, in conjunction with other factors, the Commission considers the extent to which the sanction will have a deterrent effect. *Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *48 n.72 (Dec. 12, 2013), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014).

The "inquiry into the appropriate sanction to protect the public interest is . . . flexible . . . and no one factor is dispositive." *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *13 (Sept. 26, 2007). The determination of what is in the public interest "extends . . . to the public-at-large," *Christopher A. Lowry*, Investment Company Act of 1940 Release No. 2052, 2002 SEC LEXIS 2346, at *20 (Aug. 30, 2002), *aff'd*, 340 F.3d 501 (8th Cir. 2003), "the welfare of investors as a class[,] and . . . standards of conduct in the securities business generally," *Arthur Lipper Corp.*, Exchange Act Release No. 11773, 1975 SEC LEXIS 527, at *52 (Oct. 24, 1975), *penalty modified, pet. otherwise denied*, 547 F.2d 171 (2d Cir. 1976). In assessing an appropriate sanction, I may consider matters outside the scope of the OIP. *See Calais Res. Inc.*, Exchange Act Release No. 67312, 2012 SEC LEXIS 2023, at *29 n.40 (June 29, 2012).

By submitting seventeen false opinion letters over a two-month period, Dalmy engaged in repeated fraudulent conduct. Misconduct involving fraud ordinarily warrants a severe sanction. *See Toby G. Scammell*, Advisers Act Release No. 3961, 2014 SEC LEXIS 4193, at *25 (Oct. 29, 2014) ("Fidelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." (internal quotation marks omitted)). Dalmy's actions were not isolated. She was sanctioned by OTC Markets for deficient opinion letters but did not learn from the experience. Moreover, doing something seventeen times is necessarily not a one-time event.

For several reasons, Dalmy's actions were egregious. Attorneys occupy a special position in the registration process. Without an opinion letter, a registration statement cannot take effect and securities cannot be offered for sale to the public. An attorney tasked with providing an opinion letter is thus in a position to prevent fraud. Dalmy, however, cast that role aside in favor of playing an active role in a scheme.

It is true that no investor suffered losses. *See* Div. Br. at 27 ("Dalmy's false opinion letters did not result in actual harm to investors."). If Dalmy's fraud had not been detected, however, the potential for loss was high. Dalmy is also a recidivist. She was placed on the OTC Markets' prohibited attorneys list. Yet she clearly did not learn from that experience. In this matter, she again used her status as "an experienced securities lawyer" to commit fraud.

Dalmy acted with a high degree of scienter. She obviously knew she did not do the things listed in her letters. As an experienced securities lawyer, she knew that investors at least could rely on her false statements in deciding whether to invest in the issuers' securities. Obviously, preparing false opinion letters knowing that one's false letters could be relied on by investors falls well below any "standard[] of conduct in the securities business." *Arthur Lipper Corp.*, 1975 SEC LEXIS 527, at *52.

Dalmy also lied during her testimony. Lying under oath is a serious matter, strengthening the case for a severe sanction. *See* 18 U.S.C. § 1621.

Dalmy has made no assurances against future violations or shown that she recognizes the wrongful nature of her conduct. To the contrary, she says disingenuously that she was duped.

Finally, absent any evidence of contrition, and in light of Dalmy's failure to learn from her sanction from OTC Markets, I find that there is a high likelihood that her occupation will present opportunities for future violations. Bearing in mind that the determination of what is in the public interest "extends . . . to the public-at-large," *Christopher A. Lowry*, 2002 SEC LEXIS 2346, at *20, I am mindful that the scheme in which Dalmy participated was aimed at harming the investing public.

3.2 Cease-and-desist order

Section 8A(a) of the Securities Act authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of or

rule under the Securities Act. 15 U.S.C. § 77h-1(a). In deciding whether to issue a cease-and-desist order, I must consider: (1) whether future violations are reasonably likely; (2) the seriousness of the violations at issue; (3) whether the violations are isolated or recurrent; (4) Dalmy's state of mind; (5) whether she recognizes the wrongful nature of her conduct; (6) the recency of the violations; (7) "whether the violations caused harm to investors or the marketplace"; (8) "whether [she] will have the opportunity to commit future violations"; and (9) the "remedial function [a] cease-and-desist order would serve in the overall context of any other sanctions sought in the same proceeding." *Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 4544, at *82-83 (Mar. 7, 2014), *pet. denied*, 786 F.3d 1027 (D.C. Cir. 2015); *see KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *101 (Jan. 19, 2001), *recon. denied*, Exchange Act Release No. 44050, 2001 SEC LEXIS 422 (Mar. 5, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

Here, a cease-and-desist order is both necessary and appropriate. "Absent evidence to the contrary," a single past violation ordinarily suffices to establish a risk of future violations, and "evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits . . . ordering h[er] to cease and desist." *KPMG Peat Marwick LLP*, 2001 SEC LEXIS 98, at *102-03. This is especially the case here, where Dalmy has repeated conduct that led to her being placed on OTC Markets prohibited attorney list.

As I have already determined, Dalmy's violations are serious. They involved fraud that, had it not been detected, had the potential to lead to serious losses to investors. If misconduct involving fraud ordinarily warrants "a severe sanction," *Toby G. Scammell*, 2014 SEC LEXIS 4193, at *25, repeated fraudulent misconduct necessarily calls for serious punishment.

Dalmy committed repeated frauds. Although no investor lost money, that was only the case because of the diligence of Corporation Finance personnel. If Dalmy's and Briner's fraud had not been detected, the fraud could have cost investors substantial amounts of money. Additionally, Dalmy is a repeat offender, having previously been sanctioned by OTC Markets for similar conduct. Dalmy's actions were intentional and she has shown no appreciation for the wrongfulness of her conduct. Although the violations occurred between two and three years ago, it is significant that Dalmy could have continued her fraud had Corporation Finance not unearthed the problem.

Given the foregoing, I conclude that it is necessary and appropriate to order Dalmy to cease and desist from committing or causing violations of Securities Act Section 17(a)(1) and (3).

3.3 Disgorgement

Section 8A(e) of the Securities Act permits the Commission to order disgorgement, including reasonable interest in cease-and-desist proceedings. 15 U.S.C. § 77h-1(e). Disgorgement is equitable in nature and is intended to prevent unjust enrichment and to act as a deterrent. *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989). "'Disgorgement deprives wrongdoers of the profits obtained from their violations.'" *Montford and Co., Inc. v. SEC*, 793 F.3d 76, 83 (D.C. Cir. 2015) (quoting *Zacharias v. SEC*, 569 F.3d 458, 472 (D.C. Cir.

2009)). As a result, "'[t]he touchstone of a disgorgement calculation is identifying a causal link between the illegal activity and the profit sought to be disgorged.'" *Id.* at 83-84 (quoting *SEC v. UNIOIL*, 951 F.2d 1304, 1306 (D.C. Cir. 1991) (per curiam) (Edwards, J., concurring)).

Here, disgorgement is not warranted. The Division requests that Dalmy disgorge the $1,750 she was paid for the Stone Boat opinion letter. Div. Br. at 27. I have determined, however, that the Division failed to carry its burden to show that Dalmy violated Securities Act Section 17(a) with regard to Stone Boat. Because the Division failed to connect the $1,750 Dalmy received to any violation of Section 17(a), it has not demonstrated that disgorgement is warranted. *See Montford*, 793 F.3d at 83-84.

3.4 Civil Penalties

Securities Act Section 8A(g) authorizes the Commission to impose civil monetary penalties against any person where such penalties are in the public interest and the person has violated any provision of or rule under the Securities Act. 15 U.S.C. § 77h-1(g). The statute sets out a three-tiered system for determining the maximum civil penalty for each act or omission. 15 U.S.C. § 77h-1(g)(2). For the time period at issue, the maximum first, second, and third tier penalty for each violation for a natural person is $7,500, $75,000 and $150,000, respectively. 15 U.S.C. § 77h-1(g)(2).

A maximum third-tier penalty is permitted if: (1) the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) such acts or omissions directly or indirectly 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 acts or omissions. 15 U.S.C. § 77h-1(g)(2)(C). Second-tier penalties may be imposed if the misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. 15 U.S.C. § 77h-1(g)(2)(B). First-tier penalties may be imposed simply for each violation. 15 U.S.C. § 77h-1(g)(2)(A). Although the tier determines the maximum penalty, "each case 'has its own particular facts and circumstances which determine the appropriate penalty to be imposed'" within the tier. *SEC v. Opulentica, LLC*, 479 F. Supp. 2d 319, 331 (S.D.N.Y. 2007) (quoting *SEC v. Moran*, 944 F. Supp. 286, 296-97 (S.D.N.Y. 1996)). I thus have discretion in determining the appropriate penalty within a given tier. *See S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *48 (Dec. 5, 2014) (the Commission has "discretion in setting the amount of penalty"); *see also First Secs. Transfer Systems, Inc.*, Exchange Act Release No. 36183, 1995 SEC LEXIS 2261, at *11 (Sept. 1, 1995) ("Nothing in the language of the statute or its legislative history suggests that the Commission is prohibited from assessing any lesser amount up to the maximum.").

The statutory requirements for imposition of third-tier penalties are met in this case. As discussed, *supra*, Dalmy's conduct involved fraud and deceit. Had Corporation Finance not detected the fraud early on, potential investors would have borne a significant risk of substantial losses.

The fact that Dalmy's conduct involved fraud and deceit also weighs in the public interest calculus. In this regard, although the Exchange Act, Investment Company Act, and Advisers Act

all contain a statutory list of six factors to consider when weighing the public interest in relation to monetary penalties, *see* 15 U.S.C. §§ 78u-2(c), 80a-9(d)(3), 80b-3(i)(3), Section 8A of the Securities Act, under which this proceeding was instituted as to Dalmy, does not contain a list of factors, *see* 15 U.S.C. § 77h-1(g). The six factors that apply in other contexts nonetheless provide a useful framework. I will therefore consider them in determining whether a monetary penalty is in the public interest. The six factors are: (1) whether the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the resulting harm to other persons; (3) any unjust enrichment and prior restitution; (4) the respondent's prior regulatory record; (5) the need to deter the respondent and other persons; and (6) such other matters as justice may require. 15 U.S.C. §§ 78u-2(c), 80a-9(d)(3), 80b-3(i)(3).

I have determined that Dalmy's offenses involved fraud and deceit. This determination weighs heavily against her. *See Toby G. Scammell*, 2014 SEC LEXIS 4193, at *25. On the other hand, the lack of harm to others and absence of unjust enrichment weigh in Dalmy's favor. I give these two factors only slight weight, however, because the lack of harm and absence of unjust enrichment did not result from a lack of trying or from Dalmy's attempts to prevent fraud. They instead resulted from the efforts of Corporation Finance. That Dalmy was ultimately unsuccessful does not lessen her culpability and should not inure to her benefit.

Although Dalmy has no prior regulatory history with the Commission, her record is blemished. She is listed on OTC Markets prohibited attorneys list. And she is on that list because she provided deficient attorney letters and failed to heed warnings about her deficient letters. Given the similarity between the basis for this past admonition and the facts underlying the current proceeding, I view Dalmy's history as a significant negative factor. The fact that Dalmy has proved to be a willing recidivist suggests that she is deserving of a severe penalty. *See First Secs. Transfer Systems, Inc.*, 1995 SEC LEXIS 2261, at *12-13 (determining that "[a] steep monetary penalty" was necessary because "past sanctions . . . have proven ineffective to induce [the respondent] to comply with the law").

The need for general and specific deterrence also weighs in favor of a significant penalty. Attorneys and attorney opinion letters play an important part in the process of registering securities. The Commission and the investing public must be able to rely on attorney opinion letters. If those who produce fraudulent letters are not subject to serious penalties, others will seek to emulate the bad actors' behavior. This would hurt market confidence and thus hinder issuers as they seek to raise capital.

As a final matter, I rely on the evident fact that had Dalmy's scheme not been noticed by Corporation Finance, the result would have been that innocent third party investors would have been harmed. Dalmy occupied a unique position that afforded her the opportunity to act to prevent that possible harm. Instead, she chose to abuse her position.

Considering the foregoing, I conclude that the public interest requires imposing significant, third-tier penalties. It is appropriate to tie that monetary penalty to Dalmy's intended benefit. She testified that she anticipated receiving about $20,000 for each opinion letter. Tr. 25, 49. Providing seventeen opinion letters at $20,000 per letter would yield $340,000. For purposes of deterrence and taking into account the factors noted above, I double that intended

benefit to yield a third-tier penalty of $40,000 per letter. This results in a total penalty of $680,000.

RECORD CERTIFICATION

Under Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the Record Index issued by the Secretary of the Commission on August 21, 2015.

ORDER

IT IS ORDERED that, under Section 8A of the Securities Act of 1933, Respondent Diane Dalmy, Esq., shall CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a)(1) and (3) of the Securities Act of 1933.

IT IS FURTHER ORDERED that, under Section 8A(g) of the Securities Act of 1933, Diane Dalmy, Esq., shall PAY A CIVIL MONEY PENALTY in the amount of $680,000.

Payment of the civil penalties shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) by certified check, bank cashier's check, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying the Respondent and Administrative Proceeding No. 3-16339: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360, 17 C.F.R. § 201.360. Under that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. Under Rule of Practice 111, a party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the

Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

James E. Grimes
Administrative Law Judge