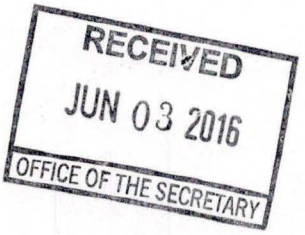
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17020



In the Matter of

Diane D. Dalmy, Esq.,

Respondent.

REPLY IN SUPPORT OF OLAP'S MOTION FOR SUMMARY DISPOSITION AND FOR AN ORDER DISQUALIFYING DIANE D. DALMY FROM APPEARING OR PRACTICING BEFORE THE COMMISSION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF EXHIBITS

INTRODUCTION

Diane Dalmy played an integral role in, and personally profited from, a $4.4 million pump-and-dump scheme involving the penny stock Zenergy International by providing bogus legal opinions that facilitated the scheme. The district court found that Dalmy's misconduct violated Sections 5(a) and 5(c) of the Securities Act of 1933, 15 U.S.C. § 77e.

Dalmy admits, as she must, that she violated Section 5. But she attributes her violations to being "too trusting of others and [having] made a good faith mistake" that Zenergy's shares were exempt from registration. Opp. at 2. She similarly claims other errors were simply "innocent mistake[s]" any attorney might make. *Id.* at 10. Based on this uncorroborated portrayal of herself as a victim of others' malfeasance, Dalmy asks this tribunal to: (a) ignore numerous emails and other evidence that shows Dalmy knew that Gasich was an affiliate of Zenergy and therefore the shares were not exempt from registration, yet she issued legal opinion letters to the contrary; (b) accept her contention that she justifiably relied on her lay clients' after-the-fact, self-serving conclusory legal determinations; (c) believe that she was wholly unaware of multiple documents, even though some of those same documents were attached to her opinion letters; and (d) believe that an experienced microcap securities lawyer did not realize she was facilitating a classic pump-and-dump scheme despite numerous red flags, including a plan to issue numerous press releases containing false or misleading information as part of an orchestrated touting campaign that was expected to lead to "a huge score . . . it's like we won the lottery ..." Exh. 14.

Each of these arguments strains credulity. Collectively, they represent Dalmy's attempt to absolve herself of any responsibility for an egregious fraud that relied on her willingness to knowingly (or at least recklessly) issue false opinion letters—an attitude that reflects a serious threat to the integrity of the Commission's processes. Most disturbingly, Dalmy displays a fundamental disregard of the obligations of an attorney-gatekeeper and of the securities laws by asserting that her misconduct was not that egregious because the requirement to register securities—a cornerstone principle—is simply "irrelevant." Opp. at 12.

Apparently recognizing the weaknesses in her substantive arguments, Dalmy claims that the Office of Litigation and Administrative Practice ("OLAP") mischaracterized the district court's decision. To the contrary, OLAP explicitly acknowledged that the "[District] Court declined to address Dalmy's contention that she acted in good faith," then accurately noted findings by the court that nonetheless undercut Dalmy's contention of wide-eyed innocence. Motion for Summary Disposition ("MSD") at 14 n.13. Similarly, OLAP acknowledged that the court "found it unnecessary to rule on whether Paradigm was a shell company," but correctly noted that the court repeatedly referred to Paradigm as such and referenced Dalmy's own website statement that "a reverse merger is a method by which an active privately-owned operation company goes public by completing a transaction with a **public shell company** . . ." MSD at 7, 13 n.12 (emphasis added).

In short, OLAP chronicled the court's factual findings—which Dalmy may not challenge—that provide an ample basis to conclude that Dalmy acted with a high

degree of scienter when she violated the federal securities laws and thereby aided and profited from an egregious pump-and-dump fraud. To protect public investors and the integrity of the Commission's processes, this tribunal should suspend Dalmy from appearing or practicing as an attorney before the Commission for a lengthy period.

ARGUMENT

I. Dalmy Knowingly Engaged in Egregious Misconduct.

Contrary to her protestations of innocence, the evidence establishes that Dalmy knowingly—or at the very least recklessly—engaged in egregious misconduct.[1]

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

Dalmy knew that Gasich was an affiliate of Zenergy. Among other things, she received at least four separate emails explicitly stating that Gasich was an affiliate of Zenergy, or that he was a "10%+" owner of Zenergy, which by her own admission makes him an affiliate. MSD at 5-6; Exhs. 5-7. Dalmy asserts that these unequivocal and unambiguous emails nonetheless "reveal only part of the story" and that "Dalmy followed up directly with Gasich specifically because of the emails OLAP cites in order to determine whether he was an affiliate." Opp. at 3. She then cites to a single email from Gasich that states, in its entirety, "Robert Gasich is a non-

[1] As explained in detail in the MSD, Dalmy served as transaction counsel between Zenergy and Paradigm Tactical Products, Inc. Individuals assigned debt conversion rights by Robert Gasich sold Zenergy shares after an extensive touting campaign for a $4.4 million profit. Dalmy personally profited $43,995. The assignees, including Dalmy, were only able to sell their shares because Dalmy opined that the shares were exempt from registration. The district court determined that Dalmy violated Section 5 in two legally independent ways: first by enabling other assignees to sell shares, and second by selling her own shares. *See* MSD at 13.

affiliate and non control person of Zenergy International, Inc." Opp. Exh. A. For many reasons, this email does not support Dalmy's contention that she had a good faith basis to opine that Gasich was not an affiliate of Zenergy.

First, it was written on July 1, 2009–more than **two weeks after** she first issued opinion letters stating that Gasich was not an affiliate of Zenergy. Exhs. 3, 16. Dalmy plainly could not have relied on information provided by Gasich in July to support opinion letters issued in June. Dalmy asserts that this email, admittedly sent "after the fact," is nonetheless "probative of what Gasich told Dalmy at the relevant time period." Opp. at 3. To the contrary, this self-serving email reflects a transparent attempt to create a paper trail to counteract the earlier writings that candidly acknowledged Gasich's affiliate status.

Second, Gasich's email is entirely conclusory, simply stating his purported **legal** conclusion that he was not an affiliate. Dalmy could not reasonably rely on this email because (a) it was devoid of any facts to support its conclusion; (b) Gasich is not a lawyer; and (c) Gasich had an obvious conflict of interest in determining whether he was an affiliate. It was Dalmy's job to independently assess the relevant facts and applicable law and come to a reasoned legal conclusion. That is the fundamental purpose of requiring attorney opinion letters. *See, e.g., SEC v. Spectrum*, 489 F.2d 535, 541-42 (2d Cir. 1973) ("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"). Even if Dalmy's contention could be credited, abdicating that responsibility to one's non-lawyer client is not mere negligence, as

Dalmy asserts, but rather a willful (or at least reckless) violation of Dalmy's basic legal responsibilities.

Dalmy's contention that she relied on Gasich's absence from the Zenergy shareholder list to conclude that he was not an affiliate is equally unavailing. Opp. at 3. First, it is incontrovertible that Dalmy, in her role as deal counsel, knew that Gasich held debt that could be converted into 300 million shares of Zenergy common stock. *See, e.g.*, Exh. 3. Because this conversion right "would have given him a majority stake in the company before it merged with Paradigm," Order at 13, Gasich was an affiliate based on his conversion rights alone.

Second, Dalmy knew that Gasich controlled shares assigned to the Spire Group, which *was* listed on the shareholder list. *See* Exh. 17. As the district court noted, Gasich stated in a June 5, 2009 email to Robert Luiten that he was assigning his shares in Zenergy to the Spire Group and that he and Dalmy "just had a call" to discuss the format of the share breakdown. Order at 5 n.5; Exh. 31.

Third, beyond Gasich's ownership of Zenergy shares, Dalmy knew that Gasich exercised sufficient control over Zenergy's operations to be an affiliate. Relying solely on her testimony, Dalmy contends that she thought Gasich was merely a consultant who deferred to Luiten on Zenergy matters. Opp. at 4. Based on the district court's findings, however, it is clear that Dalmy knew or was reckless in not knowing that Gasich exercised control far greater than that of a mere consultant. The court found that Dalmy knew: (a) Gasich was Dalmy's primary point of contact on behalf of Zenergy for the transaction; (b) "Gasich assisted her in drafting the documents

necessary to effectuate the transaction;" and (c) Dalmy admitted that "'Gasich had significant involvement in the negotiations on behalf of Zenergy.'" Order at 14. The court further noted that Gasich and Luiten jointly approved the merger agreement and board resolutions on Zenergy's behalf. *Id.*[2]

Lastly, Dalmy's argument defies common sense. Assorted "consultants," touters, Dalmy, and even Gasich's sister and niece all had an equity stake in Zenergy. *See, e.g.*, Exh. 3. Yet Dalmy asks this tribunal to ignore the evidence and instead credit her self-serving assertions that she was unaware of Gasich's control of Spire Group and she believed Gasich was the one and only person involved in the transaction who did not receive an equity interest in Zenergy.[3]

For each of these reasons, Dalmy knew that Gasich was an affiliate of Zenergy, yet issued opinion letters based on the false premise that Gasich was not an affiliate. Contrary to her assertion, *see* Opp. at 5, the above findings (among others in the opinion) lead inexorably to the conclusion that Dalmy acted with scienter. This tribunal has more than enough basis upon which to make that finding.

B. Dalmy knew that Paradigm was a shell company.

Even assuming Gasich was not an affiliate, Dalmy still could not opine that the shares should be free-trading if either company involved in the reverse merger was a shell company. Dalmy concedes she knew that Paradigm had no assets. Opp.

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[2] As deal counsel who prepared these resolutions, Dalmy would have been aware that Gasich was one of the principals who approved the deal.

[3] Presumably Dalmy also would have asked about an entity (Spire Group) that owned nearly one-third of Zenergy if she did not already know that Gasich controlled it.

at 6. She argues, however, that she did not believe Paradigm was a shell because it was an operational company. In support of this contention, she relies upon a Wells submission by Vincent Cammarata, CEO of Paradigm. Exh. D. This unsworn document, submitted in an effort to forestall an enforcement action against him, in no way undercuts the contemporaneous evidence to the contrary.

Dalmy claims that Cammarata determined Paradigm had a viable product that was undone by bad management, and he hoped new management could manufacture the product. Opp. at 6. If that were true, the acquiring company would want to obtain ownership of this product. But Dalmy knew that Paradigm did not deliver **any** assets at closing. Exh. 4 at 145.

Moreover, as Dalmy knew from her work on the deal, Paradigm was looking for **any** merger partner. Dalmy knew that Paradigm was initially planning on merging with Naturally Splendid, a purported seller of nutritional supplements. Exhs. 8, 32. (Dalmy never explains how a seller of nutritional supplements would manufacture Paradigm's purported handheld security devices.) When that deal collapsed, Scott Wilding (Dalmy's primary contact on behalf of Paradigm) emailed Dalmy and others that he still intended to merge a company with Paradigm and that he would "email everyone **a few companies** tonight and tomorrow." Exh. 8. (emphasis added). Just five days later, Dalmy learned that Paradigm had agreed to merge with Zenergy, a purported biofuels company. Exh. 33.

Dalmy thus effectively asks this tribunal to conclude that she believed Paradigm had a viable product (even though she admits that Paradigm did not

deliver any intellectual property or other assets) and in Zenergy found a merger partner that was poised to advance that product (even though Zenergy had no experience with handheld security devices and was in an entirely separate industry) after only a five-day search. In reality, Dalmy knew or was reckless in not knowing that Zenergy sought nothing more than access to the public markets, and that Paradigm provided nothing but a pre-existing public shell useful for that purpose.

That the parties to the transaction all referred to Paradigm as a shell reinforces this point. *See* MSD at 7. Dalmy argues that "[w]hether an outside person refers to a company as a shell is not dispositive." Opp. at 6. But these are not anonymous 'outside people'—these are the key representatives in this transaction. These admissions—along with Dalmy's failure to provide FINRA with a fax number, email address, or website for Paradigm because she "did not think the company had such information"—demonstrates that she knew or was reckless in not knowing that Paradigm was not an operational company. Exh. 9. Dalmy's failure in her brief to even attempt to explain how she could honestly believe an operational company would lack these basic business tools is telling.

Finally, Dalmy's reliance on an email in which her lay client states, in total, Paradigm has "never been a shell corp, deemed a shell.." is misplaced. Opp. at 5; Exh. C. Simply asking your lay client if his company is a shell and then accepting his conclusory legal determination is not due diligence. It is a willful (or at least reckless) abandonment of the attorney's obligation to make an independent assessment of the relevant facts and law before issuing a legal opinion.

The evidence shows that Dalmy knew, or was reckless in not knowing, that her legal opinion letters were false both because Gasich was an affiliate and because Paradigm was a shell company. While the district court did not need to reach the shell-company issue for its purposes, this tribunal can use the evidence above to conclude that Dalmy acted with scienter when she issued the false opinion letters.

C. Dalmy knew about the plan to pump, then dump, the worthless Zenergy stock on the unsuspecting public.

OLAP detailed Dalmy's knowledge of, and apparent participation in, an effort to pump-up the price of Zenergy shares through false and misleading press releases. MSD at 8-9.[4] Dalmy contends that she dismissed these emails as mere puffery designed to entice her to accept shares as payment for her legal fees. Opp. at 7. Her after-the-fact, self-serving assertion is once again not credible. The contemporaneous evidence shows that Dalmy knew about plans for a touting campaign that the principals intended would lead to "a huge score . . . it's like we won the lottery but cannot cash in ticket for a few weeks." Exh. 14; *see also* Exh. 10 (attaching nine press releases that were ready to issue and noting 15 more were being written);[5] Exh. 11 (press release saying the company will "explode" and "make an astonishing presence

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[4] Dalmy complains that these emails are unauthenticated, but then cites to her own testimony regarding the emails wherein she in no way disputed their authenticity. Opp. at 7.

[5] These draft releases tout, among other things, projects in Peru, Brazil, and Montreal. Exh. 10. Based on what Dalmy knew from her due diligence for the transaction, she knew, or was reckless in not knowing, that there was no way Zenergy actually had projects around the globe.

around the world," and asking whether to "add this into what [Diane] wrote?").[6] Dalmy plainly understood that these press releases were designed to dupe unsuspecting investors into believing that Zenergy had worldwide projects that made it a strong investment choice, not to encourage her to accept its stock as payment.

Finally, Dalmy argues that, if she knew Zenergy was a pump-and-dump scheme, she would have liquidated her entire position in the company. Opp. at 7. Dalmy sold 25% of her shares just after they spiked to approximately 10-times their pre-merger value. Order at 7. She cannot reasonably claim that she thought this spike—in the middle of the orchestrated touting campaign she knew was taking place—reflected the actual market value of her shares. Nor can she plausibly assert that she held onto her Zenergy shares because she believed in the long-term prospects of the company. The far more reasonable explanation is that Dalmy (an experienced microcap practitioner) knew that, if she unloaded her entire stake immediately after receiving the shares, her malfeasance would be even easier to establish.

D. The Commission's exercise of its discretion not to charge Dalmy with fraud is irrelevant.

Dalmy's argument that the Commission implicitly acknowledged that she did not act with scienter because it did not charge her with fraud is misplaced. The evidence shows that Dalmy acted with scienter. That the Commission chose not to

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[6] The evidence strongly suggests that Dalmy not only received the releases, she had an active role in drafting them. For example, Wilding asked Gasich whether one partial press release should be added to what Dalmy wrote (Exh. 11), and told Dalmy that Gasich was working on another press release "with what you sent us" (Exh. 12).

pursue fraud claims against her in the district court in no way precludes OLAP from arguing—or this tribunal from finding—that Dalmy acted with scienter.[7]

E. Dalmy was instrumental to the pump-and-dump scheme that harmed public investors.

To diminish her own culpability, Dalmy claims that her opinion letters were merely incidental to the fraud, which would have occurred with or without her involvement, and that in any event no innocent investors were harmed. Opp. at 12. These specious arguments will be addressed in turn.

1. Dalmy's opinion letters directly enabled the fraud.

Dalmy argues that the "fraud would have occurred regardless of whether [she] issued her opinion" because Zenergy could have (a) registered the shares or (b) waited for the one-year affiliate holding period to pass. *Id.* The second point is easily dispatched: as Dalmy acknowledges (*Id.* at 12 n.2), waiting for the holding period to expire was not even an option if Zenergy and/or Paradigm were shells—which they were. *See supra* at 6-7.[8]

To support her first point, Dalmy asserts that "**Registration was irrelevant.**" Opp. at 12. (emphasis added). In that shocking statement, Dalmy reveals the depths of her disregard of our federal securities laws.

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[7] Nor does it prevent the Commission from arguing that Dalmy acted with scienter in proceedings before the district court, as it is doing.

[8] In addition, it was apparent from the parties' communications that it was critical that the fraud transpire immediately. For example, on May 31, 2009, Wilding practically begged Dalmy to make sure the transfer agent had everything necessary to transfer shares that week—and offered to give her another two million shares as an incentive to move quickly. Exh. 14.

Far from irrelevant, registration is a "linchpin" of our federal securities system. *See Omnicare, Inc. v. Laborers Dist. Council Cost. Ind. Pension Fund*, 135 S. Ct. 1318, 1323 (2015). The registration requirement is "[o]ften referred to as the 'truth in securities' law" and serves the dual objectives of ensuring that investors receive relevant information about securities being sold and prohibiting fraud in the sale of securities.[9]

Complying with the registration requirements—here, particularly the audit requirement, *see* 17 C.F.R. 210.3-01—would have made the fraud more difficult and costly to perpetrate. Moreover, a registration statement would have given the Commission the opportunity to examine the company's claims, to extract additional information, and to require disclosures useful to investors (which likely would have tempered demand). Indeed, the fact that the Zenergy/Paradigm principals went to such great lengths to **avoid** the registration process is itself sufficient evidence to reject Dalmy's argument.

In short, not only was registration anything but "irrelevant," but Dalmy's letters falsely opining that an exception applied were an integral part of the fraud.

2. Innocent public investors were harmed by the fraud.

Dalmy's contention that there is no evidence innocent investors were harmed (Opp. at 11) contradicts the court's findings and defies common sense. The court specifically found that, "As the share price increased, Gasich's assignees sold their

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[9] U.S. Securities and Exchange Commission, "Fast Answers: Registration Under the Securities Act of 1933", available at https://www.sec.gov/answers/regis33.htm (link last verified June 3, 2016).

stock to **unsuspecting investors**. The assignees generated $4.4 million in profit." Order at 1 (emphasis added). One of those assignees—Dalmy—realized a profit of $43,995 from those unsuspecting investors. *Id.* at 1, 7.[10] Moreover, evidence Dalmy points to demonstrates the harm to investors: before the fraud, Zenergy (then-Paradigm) shares traded at a rounded price of $0.00—essentially worthless. *See* Exh. F. As the campaign commenced, shares spiked to $0.03-.06 in mid-June and eventually reached a high of $0.09 on August 11, 2009. *Id.* The stock quickly fell back and stayed at a rounded price of $0.00 from April 2010 forward. *Id.* The unsuspecting investors that purchased shares during the period of the fraud were thus clearly harmed.

F. Other findings against Dalmy are relevant for the purpose of demonstrating that her assurances against future violations should not be credited.

Dalmy does not even attempt to argue that her prior conduct was proper; she simply argues she was not afforded due process by OTC Markets before being placed on the prohibited attorney list. Opp. at 13. But on multiple occasions, OTC Markets gave Dalmy notice of its concerns, an opportunity to respond to their allegations against her and an opportunity to reform her conduct. Exhs. 27-28. OTC Markets placed her on the prohibited attorney list only after she failed to heed their repeated warnings. Exh. 29.

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[10] Dalmy claims OLAP misquoted the court's Order. Opp. at 9. In the one sentence cited by Dalmy, the court did use the phrase "public investors," not "unsuspecting investors." *See* Order at 7. But the fact that the court did not use the phrase "unsuspecting" in every sentence in no way undercuts its unambiguous statement in the first paragraph of the Order. *Id.* at 1.

Dalmy was also afforded due process in *John Briner Esq., et al.*, AP No. 3-16339, through a full evidentiary hearing in front of ALJ Grimes before he found that she committed securities fraud. She is also exercising her right to appeal that initial decision to the Commission. OLAP cited to the *Briner* proceeding for the limited purpose of showing that her self-serving assurances against future violations in this proceeding are belied by her testimony in that proceeding. In *Briner*, Dalmy's hauntingly familiar claim is that she was "duped" into being an unwitting participant in fraud. Exh. 34 at 117. Dalmy's involvement in that fraud took place just weeks after she submitted a Wells response to the charges underlying this case. If there were ever a time to expect Dalmy to have been vigilant to ensure that she did not (even unwittingly) get involved in another securities fraud, that would have been it. Instead, Dalmy did business with Briner, who she knew (i) was also on OTC Market's prohibited attorney list, and (ii) had been charged by the SEC in another matter (as a result of which Briner had been found to have violated anti-fraud provisions of the securities laws). *See* Exh. 34 at 95-98.

It is against this backdrop that this tribunal should consider Dalmy's unsworn, conclusory assurance that she now "will be as careful as possible" in her future dealings. *See* Opp. at 18. Dalmy in no way explains how or why that should provide comfort when her purported past efforts to avoid becoming entangled in fraud have failed so spectacularly.

G. Dalmy engaged in additional misconduct related to the opinion letters.

Dalmy argues that she made a series of innocent errors, and that her only violation was a single erroneous conclusion that Zenergy shares could trade freely. As discussed above, there was nothing "innocent" about Dalmy's actions. And she committed numerous acts of misconduct.

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

Dalmy claims that she made an innocent mistake when she told a broker-dealer there was a written convertible note to support a supposed verbal debt agreement. She now claims that there was **not** a note, and her statement to the broker-dealer was "[a] common mistake people make when responding to emails" and that she might have been thinking of another (unspecified) transaction where there was a note. Opp. at 10. In response to OLAP's proof that there **was** a note that had been backdated, Dalmy responded that "[a]ttachments get passed in email all the time without being fully reviewed" and asserted that if she had been aware of the note she would have referenced it in her opinion letters. *Id.*

These efforts to refute the contemporaneous documentation are not persuasive. The evidence shows that Dalmy willfully used a backdated note to convince a broker-dealer conducting "heightened due diligence" to allow Zenergy shares to transfer freely: Dalmy (a) provided a template for the note; (b) had the note in her files and produced it to the SEC; (c) was asked to provide a board resolution ratifying the note; (d) provided the note to an assignee with instructions to submit it to the transfer

agent; and (e) told a broker-dealer there was a note. Exh. 4 at 225-30; Exhs. 15-16; MSD at 9-10.

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

Dalmy claimed that shares had been gifted to an assignee, who was in fact a paid touter who had been retained as a consultant. *See* Exh. 20. She claims that this is yet another example of having been "misled" by her client. Opp. at 11. But again, the contemporaneous documentation shows that Dalmy engaged in reckless or willful misconduct: (a) she was provided the consulting agreement (Exhs. 19-20); (b) she knew the "giftee" was Investing in Stock Markets, Inc., (Exh. 4 at 259-60); and (c) that same entity is clearly listed as the Consultant in the agreement Dalmy attached to her opinion letter (Exhs. 19-20). No "leap of faith" or "20/20 hindsight" (Opp. at 11) is necessary to see that the "giftee" and the consultant are the same entity.

Even if Dalmy had been given an "Acknowledgment of Gift Shares" as she claims,[11] she had an obligation to conduct further due diligence to reconcile the obvious conflict between the two documents in her possession before opining that the shares had been gifted. She failed to do so, and her misconduct improperly allowed the consultant's shares to trade without registration.

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[11] Dalmy asserts that the purported Acknowledgment was destroyed in a flood and/or a computer crash. But Dalmy testified she emailed a draft to Wilding and he must have sent it back. Exh. 4 at 266-67. Therefore, the note should have been in Wilding's email and/or hard copies, but it was not part of his production.

3. Dalmy issued her final opinion letter despite admitted misgivings about Zenergy.

Incredibly, Dalmy argues that her interactions with Paradigm CEO Cammarata in December 2009 demonstrate her diligence and good faith. Opp. at 11. Although Dalmy initially refused to provide Cammarata an opinion letter in light of her concerns about the propriety of the transaction, she immediately relented after a profanity- and typo-laced email from Cammarata. Exh. 22. Two days after agreeing to write the opinion letter, she stated that she was going to "review[] everything" to "make sure that all is in order – and I am not sure it is." *Id.* Eleven days later, and without any further documented inquiry, Dalmy issued the letter Cammarata had demanded. Exh. 23.

Dalmy now claims that the purported additional due diligence she conducted demonstrates her good faith efforts. But what due diligence did Dalmy actually conduct? What did she review? What information did she discover that supposedly assuaged her concerns about Zenergy? Dalmy's brief is **completely silent** on these critical questions. Moreover, the evidence on the key questions—whether Gasich was an affiliate, whether Zenergy or Paradigm were shell companies—remains the same as it had been all along.[12] So any purported due diligence was still insufficient and still resulted in Dalmy issuing an opinion letter that she knew, or was reckless in not knowing, was false.

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[12] Dalmy's failure to discuss her purported additional due diligence is particularly telling where the known examples of what she considered sufficient "due diligence," such as her review of Gasich's conclusory legal conclusion that he was not an affiliate, are so fundamentally lacking. *See supra* at 3-4; Exh. A.

Even under Dalmy's theory that she made one mistake, repeated each time she issued a new opinion letter, issuing this letter was its own separate act of misconduct. Either Dalmy did conduct unspecified but insufficient additional due diligence; or she did not, but tried to make it appear she had by creating a paper trail and waiting a few days before issuing the letter. Either way, Dalmy cannot receive credit for initially rebuffing Cammarata when she almost immediately relented and agreed to issue an opinion letter that she knew (or was reckless in not knowing) was false.

II. Application of the *Steadman* Factors Supports a Lengthy Suspension.

In assessing whether the public interest requires imposing administrative sanctions, the Commission considers a multifactor test formulated in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). Each of the *Steadman* factors supports a lengthy suspension.

A. The fraud, and Dalmy's misconduct that enabled it, were both egregious.

Dalmy knowingly enabled a pump-and-dump scheme that allowed participants to reap a $4.4 million profit (and netted her a personal windfall of $43,995) at the expense of unsuspecting investors. Her efforts to downplay her role in the scheme—including her assertion that registration is "irrelevant," *see* Opp. at 12—do not change the fact that proper registration of securities is central to the functioning of our securities markets and a fraud that skirts those requirements is egregious. *See, e.g., SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953) (the "design of the [Securities Act] is to protect investors by promoting full disclosure of information thought necessary to make informed investment decisions").

Dalmy's misconduct was especially egregious. Without her opinion letters falsely concluding that Zenergy shares could be traded without registration, the scheme could not have occurred. Her protestations of innocence notwithstanding, it is clear that she knew (or was reckless in not knowing) that her opinion letters were false and part of a plan to dump worthless shares on unsuspecting investors. *See supra* at 3-9; MSD at 5-9. Dalmy chose to put personal profit before her obligations as an attorney and gatekeeper—an egregious abdication of her responsibilities. This factor supports a lengthy suspension.

B. Dalmy acted with a high degree of scienter.

Dalmy either knew, or was reckless in not knowing, that she was enabling a classic pump-and-dump scheme. Either way, she acted with a high degree of scienter.

The evidence demonstrates that Dalmy knew or was recklessly unaware that the Zenergy shares needed to be registered, but nonetheless issued opinion letters to the contrary to allow the scheme to proceed so that she and others could profit. First, documentary and other evidence proves she knew Gasich was an affiliate of Zenergy because she knew about Gasich's direct and indirect stock ownership and his control of the company. *See supra* at 3-6; MSD at 5-6; Exhs. 3, 5, 7.

Second, Dalmy knew or was recklessly unaware that Paradigm was a shell company. Dalmy knew Paradigm never intended to deliver any assets and was intent on merging with any company (even one in a completely different industry). Her own website says reverse mergers such as this involve shell companies. *See supra* at 6-9; MSD at 7-8; Order at 3-5.

Finally, Dalmy knew or was recklessly unaware that the participants planned a classic pump-and-dump scheme because of the emails she received planning for a deluge of press releases touting Zenergy and the expected windfall. *See supra* at 9-10; MSD at 8-9; Exhs. 10-13.

C. Dalmy's misconduct was recurrent.

Dalmy's contention that she made a single mistake opining that Zenergy shares were exempt from registration ignores her recurrent misconduct during the course of the Zenergy transaction. Dalmy did not simply issue eleven copies of the same opinion letter at the same time. And she continued issuing opinions letters over many months despite learning additional facts demonstrating the falsity of her opinions, and even after allegedly being terminated by Zenergy for asking too many questions,[13] to the detriment of unsuspecting investors who bought shares issued pursuant to those later opinion letters.

In addition, Dalmy committed unique misconduct relating to three opinion letters when she: (1) told a broker-dealer conducting "heightened due diligence" that a convertible note supported a verbal debt agreement that was vital to meeting the holding period requirements when the note either did not exist at all or was created and backdated for purposes of assuaging the broker-dealer, *see* MSD at 9-10, *supra* at 15-16; Exh. 15; (2) falsely stated that certain shares had been gifted to an assignee,

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[13] Dalmy did not address the evidence OLAP presented that she continued issuing opinion letters despite supposedly being terminated by Zenergy for asking too many questions—something that, if true, should have raised alarm bells. *See* MSD at 22-23.

when in reality the shares were issued in exchange for consulting services, *see* MSD at 10-11, *supra* at 16, Exhs. 19-20; and (3) issued an opinion letter to Cammarata that repeated the false conclusion that his shares did not need to be registered despite acknowledging that she had qualms about the Zenergy transaction and losing her law license as a result of increased regulatory scrutiny, *see* MSD at 12, *supra* at 17-18; Exh. 22.

Whether viewed as four or fourteen violations (or some number in between), Dalmy's egregious misconduct was recurrent and spanned a period of several months. This factor supports a lengthy suspension.

D. Dalmy does not recognize her wrongdoing, and has not given adequate assurances against future violations.

Dalmy's conclusory claims that she "has learned her lesson" and that she "will be as careful as possible in conducting future dealings to avoid any possibility of future improprieties" are far from reassuring (or persuasive), especially in light of her continuing failure to recognize her wrongdoing. Opp. 17-18. Of greatest concern is that she—an attorney with many years of experience in the fraud-heavy microcap space—can assert baldly that registration is irrelevant because fraudsters will find a way to ply their illegal trade. Opp. at 12. This reflects a gross misunderstanding of our securities markets, and of the important gatekeeping role attorneys play in controlling access to the markets by those would-be fraudsters. If she believes registration is "irrelevant," then this tribunal (and the public) rightly question just how "careful" she could possibly be expected to be if allowed to continue appearing or practicing.

Also of concern, she still maintains that she was simply too trusting of others when, in fact, she knowingly or recklessly abdicated her responsibilities to turn a profit.[14] She has had ample other opportunities to 'learn her lesson' yet failed to do so. She says that she "understands that any future securities laws violations" will end her career. Opp. at 17. But she expressed a similar fear to Cammarata, and still relented to his demand for one last opinion letter. Exh. 22. And she participated in the *Briner* fraud only weeks after submitting a Wells submission in the present matter, demonstrating that she is unable (if not also unwilling) to avoid participating in securities fraud, even when she has a tremendous incentive to comply.

Similarly, Dalmy's fanciful notion that the fraud did not harm innocent investors contravenes the court's conclusion and defies common sense. *See supra* at 12-13. While Dalmy seeks to curry sympathy by pointing towards her various familial responsibilities, *see* Opp. at 1, 15, 18, the investors who lost millions from the scheme may also have had mortgage, tuition, and other expenses that they now struggle to meet because of their losses.

Finally, Dalmy still casts herself as a victim who the real perpetrators "ran roughshod over." Opp. at 17. This is nothing more than revisionist history seeking to whitewash her culpability. For example, she claims that she was duped by Gasich's

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[14] She also still seems to believe that it was her acceptance of stock as payment that was her primary violation. Opp. at 17. ("The circumstances of holding shares of the stock of a client is a unique situation that will not be repeated.") The situation Dalmy needs not to repeat is issuing false opinion letters that enable perpetration of a pump-and-dump scheme, regardless of how—even, indeed, whether—she is paid.

email stating that he was not an affiliate of Zenergy. Opp. at 3; Exh. A. But Dalmy cannot plausibly claim to have been duped by choosing to rely on an email that was sent after she started issuing opinion letters which reflected nothing more than the self-serving legal conclusions of her lay client, particularly when she was aware of a myriad facts that demonstrated Gasich *was* an affiliate of Zenergy. She likewise claims that she was "misled" by Wilding into believing he had gifted shares to a friend, when the evidence she had in her possession and provided to a transfer agent demonstrated that the shares were compensation for consulting services. Opp. at 11; Exhs. 19-20. Expecting an attorney to read and understand the import of documents she sends to an assignee with instructions to pass on to a third-party, Exh. 16, does not require a "leap of faith" or "20/20 hindsight," *see* Opp. at 11. It requires nothing more than basic competence and diligence.[15]

Dalmy is entitled to defend herself, but she cannot get credit for recognition of wrongdoing and assurances against future violations when she still maintains her wrongdoing was simply that "[s]he was too trusting of others and made a good faith mistake" and that her actions were not egregious because "registration is irrelevant." Opp. at 2, 12.[16] These two factors support a lengthy suspension.

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[15] Again, even if one were to credit Dalmy's assertion of innocence, her conclusion that the shares had been gifted was nonetheless at least reckless.

[16] Dalmy's reliance on *SEC v. First City Fin. Corp., Ltd.* 890 F.2d 1215, 1229 (D.C. Cir. 1989) is misplaced. That decision merely states that the defendant's appeal of a sanction against it does not signify a lack of remorse. *Id.* OLAP does not argue that her efforts to avoid suspension signify lack of remorse; it argues that her contention that she is a victim undercuts her supposed recognition of wrongdoing. Moreover,

E. Dalmy concedes that she will have opportunities for future violations.

Dalmy does not dispute that she will have many opportunities for future violations of the securities laws if permitted to practice in this arena. Her practice has always focused on securities law, particularly work with microcap companies, and her intent (if not suspended) is to continue that practice. Because "unscrupulous lawyers can inflict irreparable harm . . . [the Commission] hold[s] [its] bar to appropriately rigorous standards of professional honor." *Emmanuel Fields*, 45 S.E.C. 262, 266 n.20 (1973).

F. 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). It is critical that the Commission send a strong message that such misconduct will not be tolerated to deter others who may be similarly tempted by the opportunity for ill-gotten gains in the penny-stock market. Authoring false legal opinions that enable the trading of unregistered securities creates a significant risk of harm to public investors because the "smooth functioning of the securities markets will be seriously disturbed if the public cannot rely on the expertise proffered by an attorney when he rendered an opinion on such matters." *Spectrum, Ltd.*, 489 F.2d at 541-42. Accepting Dalmy's contention that time served is an adequate deterrent, *see* Opp. at 18, would send a message to the penny-stock bar

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First City stated that a "lack of remorse" is relevant to whether there is a reasonable likelihood of future violations. *Id.*

that enabling and profiting from a pump-and-dump scheme will—even if caught—net only a slap on the wrist and thus embolden others to profit from flouting the securities laws.[17]

[17] OLAP cited numerous cases showing that the Commission has repeatedly sanctioned attorneys for writing false opinion letters. MSD at 33 n.23. Dalmy argues that "[m]any of the cited cases involve dishonest actions by the lawyer." Opp. at 18. Even if true, Dalmy also engaged in dishonest actions in the course of the Zenergy scheme. And in any event, the *Steadman* factors support a lengthy suspension for Dalmy's misconduct.

CONCLUSION

OLAP respectfully requests that this tribunal find there is no genuine dispute of material fact that would preclude summary disposition, and suspend Dalmy from appearing or practicing as an attorney before the Commission for a substantial period.

Dated: June 3, 2016

Respectfully submitted,

THOMAS J. KARR
Assistant General Counsel

KAREN J. SHIMP
Special Trial Counsel

ERIC A. REICHER
Senior Counsel

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9612
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Counsel for the OLAP

CERTIFICATE OF COMPLIANCE

I hereby certify that, according to Microsoft Word, the foregoing **Reply in Support of OLAP's Motion For Summary Disposition And For An Order Disqualifying Dalmy From Appearing And Practicing Before The Commission** has 6,800 words (excluding the cover page; Tables of Contents, Authorities and Exhibits; Certificates of Compliance and Service; and attachments).

June 3, 2016

Eric A. Reicher

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Reply in Support of OLAP's Motion for Summary Disposition and for an Order Disqualifying Dalmy from Appearing and Practicing Before the Commission** was served on each of the following on June 3, 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.
Washington, D.C. 20549-2557
ALJ@sec.gov

By E-mail
Mr. Howard Rosenburg, Esq.
Kopecky Schumacher Bleakley Rosenburg PC
203 N. Lasalle Street, Suite 1620
Chicago, IL 60601
hrosenburg@ksblegal.com

Eric A. Reicher

EXHIBIT 31

From: "[redacted]
To: robe[redacted]
Sent: Fri, June 5, 2009 12:47:04 PM
Subject: Re: to get back in the black

Okay...we are close - just had a call with Diane in terms of format.

These are next steps 216 Million shares that are coming to us - do you want to handle the exchange or shall I? Meaning everyone has to send their shares to me or you to get the new shares? I will prepare the letter.....

Here is the break down:

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 (converting my shares to corporation)

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

Then we issue the free trading block post the above issuance to help infuse capital - the other side is very friendly (at least today) and offered reassurance - old CEO cant sell for 90 days.

In terms of volume the LARGE PR/IR group that did ILVC today - will bring in the same visibility for us. Already retained and waiting for the green light - believes this will be one of his biggest winners EVER!

I suggest in the next 30 days with the minimum of $700K - we pay ourselves for our back pay etc to get us back above sea level and for getting GeoGreens on the books. Surprisingly, as of today this has not cost us anything out of pocket (only time and frustration) which is uncommon.

In terms of the stock, once we do a name change and symbol change - I see us breaking the .20-25 cent range in the first week of trading with an attempt at .40 cents. Then we can see where she will settle down.

Take a look at ILVC - we are in good company!! It's show time - I'm optimistic all the way!

EXHIBIT 32

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

EXHIBIT 33

Message

From:	Liquid Investors Organization[liquidinvestorsorg@accesspro.net]
Sent:	3/24/2009 10:14:03 PM
To:	vince[redacted]
CC:	Diane[redacted]
Subject:	PDGT / Zenergy International,Inc merger

Dear Diane,

PDGT.pk and Zenergy International, Inc www.zenergyintl.com plan to do a merger agreement between the said company's..We have verbally agreed on the share structure and percentage breakdown 80/20. We would like to engage your services to help us put this deal together.When will you be available to have a conference call this week? PDGT still needs to amend par value to 0001, apply for the 75-1 reverse stock split and convert the debt to equity.

After the 75-1 rs there will be roughly 14,500,000 shares I/O and in the float (29m combined)

$30,000 dollars in debt will be converted at par value 0001 = an additional 300m free trading shares.

300M free trading , 214M restricted (Zenergy) = total issued and out will be 514M.

Zenergy has requested an 80/20 split..Here is the breakdown that we have verbally agreed upon

514M issued and out.
300M free trading through a debt to equity conversion from PDGT's debt...
214M restricted /for Zenergy
198M free trading for financing Zenergy,etc to be held from a nominee from Zenergy's side. 412M combined for Zenergy side
102M will be issued to PDGT's side which are three of us.

Skyline Capital Investment,Inc
President
Scott Wilding
954 593 6622
LiquidInvestorsorg@accesspro.net

Plaintiff's Exhibit
Exhibit No.: 25
Name: Diane Palmy
Date: 6-10-14
ESQUIRE

EXHIBIT 34

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:	)	
	)	File No. 3-16339
JOHN BRINER, ESQ. AND	)	
DIANE DALMY, ESQ.	)	

ADMINISTRATIVE PROCEEDINGS - HEARING, VOLUME I

PAGES: 1 through 174

PLACE: Alfred A. Arraj Courthouse
901 19th Street, Room 702
Denver, CO 80294

DATE: Wednesday, May 27, 2015

The above-entitled matter came on for hearing, pursuant to notice, at 9:00 a.m.

BEFORE:

JAMES GRIMES, ADMINISTRATIVE LAW JUDGE

Exhibit 261?
MR. KAUFMAN: Potential for violating the securities law, opportunity to violate the securities law, continuing for relief, Your Honor.
JUDGE GRIMES: Just the fact of a complaint? It is just a charge. It is not evidence of anything.
MR. KAUFMAN: Yes, Your Honor. That is what we offer it for.
JUDGE GRIMES: You offer it for what purpose?
MR. KAUFMAN: For the purpose of showing, for the purpose showing that Ms. Dalmy is likely to violate the securities laws in the future.
JUDGE GRIMES: I am not going to admit 261. 261 is not admitted, not on that basis.
MR. KAUFMAN: Your Honor, we would also offer it for an additional purpose which is it is an allegation but it is that she, Ms. Dalmy, issued opinion letters allegedly to transfer agents that improperly included shares that were unrestricted. In other words, she offered improper opinion letters. So it is similar to this case. We offer it for liability as well.
JUDGE GRIMES: Well, I will note your position, but I am not going to admit it on that basis.
Q Ms. Dalmy, you have spoken a lot about Mr.

Briner today, John Briner; is that right?
A Yes.
Q And he was your principal contact at MetroWest, correct?
A Yes. I actually met him in 2007 when he worked at Devlin & Jensen.
THE WITNESS: D-e-v-l-i-n & J-e-n-s-e-n.
Q You understood back in 2012 that Mr. Briner owned the MetroWest Law Firm, correct?
A Yes, he went out on his own from Devlin & Jensen, so, yes.
Q Okay. And you did some work with Mr. Briner prior to 2012, correct?
A I engaged in work with him at Devlin & Jensen and then when he left Devlin & Jensen in 2007, he flew in to Denver and I met with him and I agreed to assist him on an occasional basis. So, yes.
Q Now, I believe that you testified before during this process of you giving draft opinion letters to Mr. Briner, you trusted Mr. Briner to do the right thing; is that right?
A For the span of years that I had worked with Mr. Briner, I never had any major issue with him. I would provide legal service on an occasional basis.
My practice certainly did not rely on

anything that he asked me to do. I was not aware of any SEC litigation against him. I had done a Google search and I trusted him as a lawyer.
Q So prior to December of 2012 you had done a Google search on Mr. Briner?
A I did a Google search on Mr. Briner in 2007 after he flew in to Denver with his sister meeting me.
Q So you knew that Mr. Briner – as of 2012 you knew that he was also listed on the OTC s prohibited attorneys list?
A At that point in time, yes, because of the SEC versus Apple, whatever the name of that litigation was.
Q Okay. So you knew – you also knew that Mr. Briner was involved with SEC litigation at the time in 2012?
In other words, you knew that he had been involved in SEC litigation?
A I knew that he had been involved, yes.
MR. KAUFMAN: Could you call up Exhibit 105, please, Raymond.
Q And Exhibit 105 is a second complaint against several defendants, including John Briner.
Do you see that, Ms. Dalmy?
A Yes, I do.

Q And this is the action that you were just referring to that you were aware of in 2012?
A Yes, I was not aware of the specifics, but I was aware of this litigation.
MR. KAUFMAN: And if you look at the last page of the exhibit, you will see it is dated August 31, 2009. Your Honor, the Division offers Exhibit 105.
JUDGE GRIMES: Ms. Dalmy, what is your position on Exhibit 105?
MS. DALMY: I don't see it has any relevance as to whether I authorized opinion letters. This pertains to John Briner who did not even bother to appear.
JUDGE GRIMES: Well, I intend to agree. Its relevance is pretty limited. You have testified however that you were aware of this so as it goes to, I guess, background as to what was going on, I will give it the weight observed based upon your testimony that you have I take it never seen this document before?
THE WITNESS: No, I have never seen it.
JUDGE GRIMES: It is admitted on that limited basis. Which exhibit is this, 105?
MR. KAUFMAN: Yes.
JUDGE GRIMES: All right.

(Division Exhibit No. 105 was received in evidence.)

Q Let us look at Exhibit 106.

Ms. Dalmy, I take it you were also aware by 2012 that there was a judgment entered against Mr. Briner in that action that we had just been talking about, that SEC action?

A I cannot say that, if I was or was not.

MR. KAUFMAN: Your Honor, the Division offers Exhibit 106.

JUDGE GRIMES: Ms. Dalmy.

MS. DALMY: I would object to this. I am not aware of this judgment, and I see no relevancy in the issue at hand as to whether I authorized opinion letters.

MR. KAUFMAN: Your Honor, Ms. Dalmy claims that she trusted Mr. Briner. Mr. Briner has a colorful regulatory history. These items were available to anyone who wanted to Google Mr. Briner back then when Ms. Dalmy was providing what she calls draft opinion letters to the MetroWest Law Firm. She may claim that she did not know about it. We would claim that she did. There is a credibility issue there.

JUDGE GRIMES: Fine. Ms. Dalmy, what is your position?

MS. DALMY: I Googled John Briner's name in 2007.

JUDGE GRIMES: I want to know what your position is on this?

MS. DALMY: My position is that it has no relevancy to the issue at hand.

JUDGE GRIMES: Well, it is relevant to the extent – well, its relevance is also limited to the purpose that I noted. I will admit 106 on that basis recognizing that I think your testimony was that you never saw this document; is that right?

THE WITNESS: I have not seen this document, Your Honor.

JUDGE GRIMES: Thank you. 106 is admitted.

(Division Exhibit No. 106 was received in evidence.)

MR. KAUFMAN: And then the same thing with Exhibit 107 which is an OIP settlement order against Mr. Briner.

JUDGE GRIMES: I will cut to the chase. Did you ever see this one?

MS. DALMY: No, I did not.

JUDGE GRIMES: Go ahead, Mr. Kaufman, what is going to be your question?

MR. KAUFMAN: I would just offer it as an additional matter that we believe Ms. Dalmy knew about.

JUDGE GRIMES: I will note Ms. Dalmy's objection to 107. I will admit it for the same basis that I admitted 105 and 106 taking it that I assume that you have never saw this?

MS. DALMY: No, I have not seen this.

JUDGE GRIMES: Were you aware of this procedure?

MS. DALMY: I was aware of the general proceeding. I was not aware of any specifics of the order.

JUDGE GRIMES: Thank you. That exhibit is admitted, as I said.

Go ahead, Mr. Kaufman.

(Division Exhibit No. 107 was received in evidence.)

MR. KAUFMAN: May I have a moment, Your Honor?

JUDGE GRIMES: Sure.

MR. KAUFMAN: May I just confer with my co-counsel?

JUDGE GRIMES: Please.

MR. KAUFMAN: We will turn the witness over to Ms. Dalmy.

JUDGE GRIMES: All right. Thank you, Mr. Kaufman.

Ms. Dalmy, if you would like to retrieve some of your notes that will help you testify, you can or if you want to just –

MS. DALMY: Can we take lunch now so that I can –

JUDGE GRIMES: It is a little early to take lunch. It is only 11:15.

MS. DALMY: Well, I did not understand the general –

MR. KAUFMAN: We don't mind if Ms. Dalmy takes as much time as she needs.

JUDGE GRIMES: In that case, I guess we will take lunch now. Your witness is not going to be ready to go until —

MR. KAUFMAN: Your Honor, we apologize for that.

JUDGE GRIMES: It is not your fault. I understand that you do not control United Airlines or whoever is flying her in.

MR. KAUFMAN: As soon as she gets here, there may be some lag time, we may have to wait for her.

JUDGE GRIMES: How about if I give you a few minutes, otherwise we are sitting around doing nothing for no reason.

MS. DALMY: It was a client. It is now –
JUDGE GRIMES: You are not referring to one of the –
MS. DALMY: No, I am just explaining.
JUDGE GRIMES: It is a client to whom you have not referred to before?
MS. DALMY: Right. It is Czech Republic.
JUDGE GRIMES: Okay. I got it.
MS. DALMY: Why I did not go to the SEC, why I was giving him his time that he could file responses to these comment letters, address the fact that he was withdrawing all of these, which eventually he did withdraw them, wrongfully or rightfully, I left it to him for a couple of reasons.
One, I didn't feel that I had the authorization. I have no engagement letter with these clients. I felt that the request for withdrawal should come from the company itself.
I did not want to draw attention – I did not want to go to the SEC. I did not want to draw attention to myself. I wanted to just get these withdrawn and get these over with.
Also, I had discussed with him the fact that it did not appear to be any harm because none of these registration statements would be cleared. There would

be no response letters filed with the SEC pertaining to the comment letters.
There would be no sales of stock ever to the public and, therefore, we would just, we would just merely withdraw these registration statements, and he would be explaining in the registration statements that they were erroneously filed.
So then the last of my exhibits, Exhibit 1. This email I sent to him after –
JUDGE GRIMES: I am sorry. For the record, you sent this email to whom?
MS. DALMY: To John Briner.
JUDGE GRIMES: All right.
MS. DALMY: He had gone dark, and I could not get a hold of him. He just disappeared.
So I followed it up with this email and there were still things with another company that were one of my clients that had purchased from him or from a client of his that he unfortunately was also representing that I needed to work with also as far as this particular company.
JUDGE GRIMES: One second, Ms. Dalmy.
Do you have an objection?
MR. KAUFMAN: No, I am just wondering if it is being offered.

JUDGE GRIMES: I am going to get to that.
Go ahead, Ms. Dalmy.
MS. DALMY: Well, I am offering this to show –
JUDGE GRIMES: Do you want to offer this into evidence?
MS. DALMY: This particular email, yes.
JUDGE GRIMES: Okay. So you recognize this as you actually sent this email to Mr. Briner on the day and time stated in the email?
MS. DALMY: Yes.
JUDGE GRIMES: Mr. Kaufman, do you have any objection.
MR. KAUFMAN: No, Your Honor.
JUDGE GRIMES: Hearing no objection, Respondent's Exhibit 1 is admitted.
Go ahead, Ms. Dalmy.
(Respondent Exhibit No. 1 was received in evidence.)
MS. DALMY: Well, I had realized that he had at least finally filed all of the withdrawals, each respective company had done so.
And so this is my email to him after that that, again, reflects that I have no association with these companies. I had nothing to do with any of this.

I had merely provided draft registration statements.
As far as the exhibits relating to the comment letters and sending the email addresses to the SEC, I do not deem silence as being a form of ratification whatsoever. Silence is not a form of acceptance. Silence is not a form of voting.
Silence, as far as my silence with regards to these opinion letters and, again, my focus was on the registration statement and to get these registration statements withdrawn, was in totality looking at the registration statement.
And based on all of this and what I have learned about John Briner since, I really am of the position I was completely duped. I was completely used.
Did I lack better judgment as a far as during the SEC comment process? Perhaps so, but I had no part in this.
I have built my practice up from the ground floor, and I have excellent clients and my clients will stick by me. They still do to this day.
With respect to working with John Briner, I did so on occasion and do I regret it? Absolutely, yes.
And I do feel that I am at such a