

UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

In The Matter of the Application of
6D Global Technologies, Inc.
For Review of Action Taken by
The Nasdaq Stock Market LLC

Admin. Proc. File No. 3-17908

**NASDAQ'S MOTION TO DISMISS
6D GLOBAL TECHNOLOGIES, INC.'S APPLICATION FOR REVIEW
AS UNTIMELY**

Edward S. Knight
Executive President and General Counsel

John M. Yetter
Vice President and Deputy General Counsel
John.Yetter@nasdaq.com

Arnold Golub
Vice President and Deputy General Counsel
Arnold.Golub@nasdaq.com

Nasdaq – Office of General Counsel
805 King Farm Blvd.
Rockville, MD 20850
Phone: 301-978-8400
Fax: 301-978-8472

Counsel for The Nasdaq Stock Market LLC

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I. INTRODUCTION

The Nasdaq Stock Market LLC (“Nasdaq”) moves to dismiss the application for review filed by 6D Global Technologies Inc. (“6D”), dated April 5, 2017. 6D’s application for review is untimely. 6D filed this application nearly three months after the expiration of the 30-day appeal deadline set by the Commission’s rules of practice. *See* 17 C.F.R. § 201.420(b).

Pending resolution of this motion, the Commission should stay the briefing schedule on the application for review and Nasdaq’s obligation to file and certify the record.

II. PROCEDURAL AND FACTUAL BACKGROUND

For more than a year, 6D has been engaged in proceedings with Nasdaq regarding whether to delist 6D’s stock. Those proceedings culminated in a final decision delisting 6D’s stock following, among other developments, the resignation of 6D’s independent auditor in response to numerous inconsistencies with statements by 6D’s CEO; claims that 6D misled the independent counsel to its Audit Committee as well as Nasdaq; and 6D’s failure to comply with basic fee and filing requirements.

On November 20, 2015, Nasdaq listing qualifications department staff notified 6D of their position that 6D’s stock should be delisted under Nasdaq Rule 5101. Decision, Nasdaq Listing & Hearing Review Council at 2, Dkt. No. NQ 6119C-16 (June 16, 2016) (Ex. A). 6D, in response, exercised its right to appeal the listing staff determination to a Listing Qualifications Hearings Panel. *Id.* That panel issued a decision on March 24, 2016, affirming the staff’s delisting decision. *Id.* at 3.

6D appealed the panel decision to the Nasdaq Listing and Hearing Review Council pursuant to Nasdaq Rule 5820(a). The Council issued its decision on June 16, 2016, affirming the panel. Relying on the Exchange Act’s and Rule 5101’s grant of “broad discretionary

authority over the initial and continued listing of securities” to protect investors and promote the public interest, the Council found that the circumstances here “readily justif[ied] delisting pursuant to Rule 5101.” Ex. A at 10-12 (citation omitted).

The Council stated that the events “giving rise to BDO’s resignation as the Company’s auditor warrant[ed] delisting”—including BDO’s conclusion that it “could not accept the representations of Mr. Kang” (6D’s CEO) because of the “number of inconsistencies noted during’ BDO’s audit,” as well as Mr. Kang’s refusal to resign and 6D’s Board’s refusal to require Mr. Kang to “separate or be separated from” the Company. Ex. A at 3, 12. The Council also supported the delisting decision by pointing to the treatment of the Audit Committee’s independent counsel Blank Rome by 6D and its board. *Id.* at 12. Specifically, Blank Rome disputed several of 6D’s representations made during the delisting proceedings before Nasdaq. *Id.* at 9-10. 6D’s failure to comply with filing and annual fee requirements supplied “additional grounds for delisting.” *Id.* at 12.

The Council’s delisting decision was communicated to 6D via electronic mail to its attorney David A. Donohoe on June 20, 2016. Letter from J. Cayne to 6D Global Technologies, Inc. (June 20, 2016) (Ex. B).

The June 16 decision further explained that the Council’s decision could be taken up by Nasdaq’s board of directors at its next meeting. Ex. A at 13 n.64. Nasdaq formally notified 6D on November 28, 2016 that the board had chosen not to review the decision, and thus the Council’s delisting decision became final pursuant to Nasdaq Rule 5825. Letter from J. Cayne to 6D Global Technologies, Inc. (Nov. 28, 2016) (Ex. C). The November 28, 2016 notice also informed 6D of its rights to appeal the final delisting decision “as provided by Rule 420 of the SEC Rules of Practice.” *Id.* On December 9, 2016, Nasdaq filed a Form 25 notification with the

Commission, providing the required notice of its final decision to delist 6D. *See* Form 25 (Ex. D); 17 C.F.R. § 240.19d-1.

Pursuant to Rule 420, 6D's time to appeal began to run on December 9, 2016, and ended on January 9, 2017 (that is, the next non-Saturday, Sunday, or holiday after January 8, 2017). 17 C.F.R. § 201.420(b); *id.* § 201.160(a). Nearly three months later, on April 5, 2017, 6D filed an application for review of Nasdaq's final decision. 6D's application provided no explanation why its filing was beyond the 30-day period provided by Rule 420.

III. ARGUMENT

The Commission should dismiss the application for review because 6D submitted its application nearly three months after the 30-day appeal deadline and thus it is untimely. No exceptional circumstances are present here, and the Commission has repeatedly insisted on strict compliance with this deadline. Given the patent defect in 6D's application, the Commission should grant Nasdaq's motion to dismiss, and stay any briefing schedule and Nasdaq's obligation to file the record.

A. 6D's Application For Review Should Be Dismissed As Untimely.

Section 19(d)(2) of the Securities Exchange Act of 1934 ("Exchange Act") provides that any person aggrieved by a final disciplinary sanction imposed by a self-regulatory organization may file an appeal "within thirty days" after the date the notice of the self-regulatory organization's determination was filed with the SEC and received by the aggrieved person, or "within such longer period as [the SEC] shall determine." 15 U.S.C. § 78s(d)(2). SEC Rule of Practice 420 is the "exclusive remedy" for seeking an extension of the 30-day appeal period. 17 C.F.R. § 201.420(b). That rule provides that the Commission will allow the filing of a late application for review only upon "a showing of extraordinary circumstances." *In re Guevara*,

Exchange Act Release No. 34-78134, 2016 WL 3440196 at *2 (June 22, 2016) (citation omitted).

6D's appeal is untimely and the Commission should dismiss it. Nasdaq notified 6D by electronic mail on November 28, 2016 that the Listing Council's decision "represents Nasdaq's final action in this matter," and expressly informed 6D of the appeal rights "provided by Rule 420 of the SEC Rules of Practice." Ex. C. Nasdaq filed the required Form 25 with the Commission on December 9, 2016, providing public notice of Nasdaq's final decision. Ex. D. 6D's application for review is dated April 5, 2017, which is well past the 30-day appeal deadline.

6D's application presents no extraordinary circumstances warranting an exception to the rules of practice. The application provides no justification whatsoever for 6D's late filing. And 6D does not argue, nor is there any reason to believe, that its citation of the opinion in *Puddu v. 6D Gobal Techs., Inc.*, is relevant to this determination. No. 15-Civ.-8061, Dkt. 121 (S.D.N.Y. Mar. 6, 2017). As 6D's recitation of that case shows, the *Puddu* decision focused on various pleading deficiencies in a private securities suit—particularly regarding allegations that Benjamin Wey owned or controlled 6D or that 6D concealed its relationship with Wey. Application at 1. However, as the district court in *Puddu* expressly noted, Wey's purported ownership or control of 6D "was not a basis for 6D's delisting." *Puddu*, Slip Op. 34; accord Ex. A at 13. A number of other reasons supported Nasdaq's delisting decision, including the circumstances giving rise to the resignation of 6D's auditor; the treatment of Blank Rome (the Audit Committee's independent counsel) by 6D and its board; and 6D's failure to pay required fees and to comply with filing requirements. Ex. A at 12.

The Commission has repeatedly declined to review late applications in similar circumstances. See, e.g., *In re Guevara*, 2016 WL 3440196 at *2 (dismissing application filed

“17 days after the appeal period expired” as untimely); *In re Ballard*, Exchange Act Release No. 34-77452, 2016 WL 1169072 at *2-3 (Mar. 25, 2016) (dismissing respondent’s application as untimely when filed “21 days after the appeal period expired”); *In re Wanger*, Exchange Act Release No. 34-79008, 2016 WL 5571629 at *3 (Sept. 30, 2016) (finding application beyond 30-day time period untimely and collecting prior decisions); *In re Manzella*, Exchange Act Release No. 34-77084, 2016 WL 489353 at *4 (Feb. 8, 2016) (dismissing application as untimely when filed more than nine months after 30-day deadline); *In re Lenahan*, Exchange Act Release No. 34-73146, 2014 WL 4656403 at *3 (Sept. 19, 2014) (dismissing application where only excuse for untimely filing was ignorance of effect of SRO action and alleged reliance on advice from a FINRA examiner). As the Commission has held, “strict compliance with [the] filing deadlines facilitates finality and encourages parties to act timely in seeking relief.” *In re Ballard*, 2016 WL 1169072 at *3 (citation omitted); *In re Manzella*, 2016 WL 489353 at *4 (same). Accordingly, the Commission should dismiss 6D’s appeal because it is untimely.

B. The Commission Should Stay The Filing Of The Record And The Briefing Schedule While Nasdaq’s Motion Is Pending.

Every piece of information the Commission needs to dispose of this application is within or attached to this motion. As the notices provided to 6D and publicly filed with the Commission demonstrate, 6D’s application is untimely. It is unnecessary, therefore, that Nasdaq compile and file with the Commission the record underlying 6D’s application—which it would otherwise be required to do by April 19, 2017, 17 C.F.R. § 201.420(e)—while its plainly meritorious motion to dismiss is pending. In the event Nasdaq’s motion is denied, Nasdaq can file the record without prejudice to 6D and without any substantial delay to proceedings.

Nasdaq therefore requests that the Commission stay Nasdaq’s obligation to certify and file the record in this matter while this motion is pending. 17 C.F.R. § 201.161. For the same

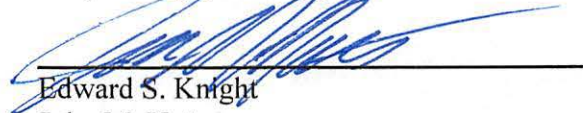
reason, Nasdaq also requests that the Commission stay the issuance of a briefing schedule in this matter. The Commission should first evaluate the dispositive argument that 6D's appeal should be dismissed on timeliness grounds before it requires Nasdaq to file the record or the parties to brief the underlying substance of this appeal.

IV. CONCLUSION

The Commission should dismiss 6D's application for review because it is untimely.

Dated: April 12, 2017

Respectfully submitted,



Edward S. Knight

John M. Yetter

Arnold Golub

Nasdaq – Office of General Counsel

805 King Farm Blvd.

Rockville, MD 20850

Phone: 301-978-8400

Fax: 301-978-8472

Counsel for The Nasdaq Stock Market LLC

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2017, I caused a true and correct copy of the foregoing document to be served on the following by hand delivery:

Paula D. Shaffner
Amy E. Sparrow
Stradley, Ronon, Stevens & Young, LLP
2600 One Commerce Square
Philadelphia, PA 19103

Attorneys for 6D Global Technologies, Inc.



John M. Yetter

Counsel for The Nasdaq Stock Market LLC

Exhibit A

**BEFORE THE NASDAQ LISTING AND HEARING REVIEW COUNCIL
THE NASDAQ STOCK MARKET LLC**

In the Matter of

6D Global Technologies, Inc.
c/o David A. Donohoe, Jr.
Donohoe Advisory Associates LLC
9901 Belward Campus Drive, Suite 175
Rockville, MD 20850

Concerning the Operations of
The Nasdaq Stock Market

DECISION

Docket No. NQ 6119C-16

Date: June 16, 2016

This matter appears before the Nasdaq Listing and Hearing Review Council pursuant to an appeal by 6D Global Technologies, Inc. (the "Company"), of a Nasdaq Listing Qualifications Hearing Panel determination to delist the Company from The Nasdaq Stock Market ("Nasdaq"). After considering the record in this matter, the Listing Council affirms the decision of the Panel.

Background and Proceedings Below

Company Background

The Company describes itself as a digital business solutions company. It has business units providing web experience, analytics, creative, mobile, marketing, and infrastructure staffing services. It was formed in September 2014 in connection with a transaction in which CleanTech Innovations, Inc. ("CleanTech"), merged with Six Dimensions, Inc. ("Six Dimensions"); the merger resulted in the formation of the Company, which has continued the operations of Six Dimensions, and CleanTech's operations were disposed of upon the completion of the merger. Also in connection with the merger, CleanTech converted all of its indebtedness to NYGG (Asia) Ltd., an affiliate of New York Global Group ("NYGG"), in exchange for the issuance of more than 35 million shares of the Company's common stock. The CEO of NYGG is Benjamin Wey. The Company's CEO is Tejune Kang, who was the founder of Six Dimensions.

The Company's common stock began trading on Nasdaq on December 12, 2014.

Nasdaq Trading Halt

On September 10, 2015, the United States Attorney's Office of the Southern District of New York announced a Grand Jury indictment against Mr. Wey and his banker, charging them

with conspiracy, securities fraud, wire fraud, and other crimes.¹ The SEC separately announced charges under several sections of the Securities Exchange Act of 1934 against Mr. Wey, NYGG, Michaela Wey (Mr. Wey's wife), Mr. Wey's banker, and two attorneys who had represented the Company and other companies affiliated with Mr. Wey in connection with their listing on Nasdaq.²

The same day, Nasdaq halted trading in the Company's securities based on concerns raised by the grand jury indictment and the SEC charges against Mr. Wey, NYGG, and the Company's former counsel, and their association with the Company. Since then, the Company's common stock has traded on the OTC "Grey Market."

Staff Delisting Determination

Nasdaq Listing Qualifications Department staff ("Staff") subsequently conducted an investigation. On November 20, 2015, Staff notified the Company that it had determined to delist the Company's securities based on public interest concerns under Nasdaq Rule 5101. Staff's determination was based on findings concerning Wey's influence over the Company and his relationship with Mr. Kang, and information that raised questions whether the Company's securities were manipulated to satisfy the initial listing shareholder and price requirements in a manner similar to that alleged by the government with respect to other companies.³

Hearing Panel Decision

The Company timely appealed the Staff's determination to a Nasdaq Listing Qualifications Hearing Panel, which held a hearing on January 21, 2016.⁴ The Panel delayed its decision pending completion of a review by the Company's Audit Committee and its independent counsel of matters raised by the Staff. The Panel received a report from the Company's Audit Committee on February 26, 2016, and further submissions from the Staff and the Company concerning the Audit Committee's report.⁵

On March 17, 2016, the Company advised the Panel of the following developments:

- (i) the Company would not timely file its Form 10-K for the fiscal year ended December 31, 2015;

¹ U.S. v. Wey, et al., Crim. A. No. 15-cr-00611-AJN (S.D.N.Y.).

² SEC v. Wey, et. al., Civ. A. No. 15-cv-07116-PKC (S.D.N.Y.).

³ Staff Delisting Determination, dated Nov. 20, 2015.

⁴ See Letter from Nasdaq Listing Qualifications Department to Company's Representatives, dated Nov. 30, 2016; Transcript of Hearing Before Nasdaq Listing Qualifications Hearing Panel, Jan. 21, 2016.

⁵ See Decision of Nasdaq Listing Qualifications Hearing Panel, dated March 24, 2016 ("Panel Decision"), at 2.

- (ii) the Company's independent auditor, BDO, had concluded that it could not accept the representations of Mr. Kang "because of a number of inconsistencies noted during" BDO's audit, and that BDO had required that Mr. Kang "separate or be separated from" the Company for BDO to continue as its auditor; and
- (iii) at a Company Board meeting on March 17, 2017, Mr. Kang determined not to resign, the Board did not terminate Mr. Kang, and the Chair of Company's Audit Committee, Adam Hartung, resigned from the Board.⁶

The Panel issued its decision on March 24, 2016, concluding that it was an appropriate use of Nasdaq's regulatory authority under Nasdaq Rule 5100 to delist the Company's stock based on BDO's letter rejecting Mr. Kang's representations and the response of the Company's Board of Directors.⁷ The Panel found those events to constitute a "corporate crisis" that was "highly suggestive of a weak corporate governance structure," and that would delay the filing of the Company's Form 10-K for a substantial period of time.⁸ The Panel concluded that continuing the Company's listing would not serve Nasdaq's regulatory goals, and would instead "convey to the market a confidence that the issues will be resolved efficiently and satisfactorily – a confidence that the Panel does not have."⁹

The Panel also reviewed the evidence in the record concerning Staff's assertions about (i) undue and improper influence over the Company by Mr. Wey, (ii) control of NYGG Asia's Company stock, (iii) an allegedly deceptive scheme by Mr. Wey and the Company's former counsel to obtain listing on Nasdaq, and (iv) alleged manipulation of the Company's stock price. The Panel determined not to base its decision on any of those issues.¹⁰

Listing and Hearing Review Council Proceedings

The Company timely appealed the Panel decision to the Nasdaq Listing and Hearing Review Council ("Listing Council") on April 8, 2016.¹¹

The Company's Brief and Responses to Nasdaq's Information Requests, and BDO's Letters to the Company

On April 25, 2016, the Company submitted its appeal brief, along with responses to Staff's information requests dated March 22 and April 15, 2016.¹² In its brief, the Company

⁶ See Panel Decision at 2.

⁷ Panel Decision at 4, 10-11.

⁸ Panel Decision at 4, 11.

⁹ Panel Decision at 11.

¹⁰ Panel Decision at 4-10.

¹¹ E-mail from Company Representatives to Nasdaq Listing Qualifications Department, dated April 8, 2016.

¹² Company Submission in Support of Appeal & Request for Exception, dated April 25, 2016 ("Company Brief"); Company Response to March 22, 2016 Information Request,

explained that its Audit Committee had undertaken a Section 10A independent investigation as to whether there was merit to the concerns expressed in the Staff delisting determination, and whether there had been misrepresentations or other improper behavior by Company management with respect to Mr. Wey and the Staff's concerns.¹³ The Audit Committee retained Blank Rome LLP, an independent law firm, to conduct the investigation. Blank Rome found no evidence (i) that the Company's current or former directors were unduly influenced by Mr. Wey, (ii) of inflation of the Company's shareholder count to help the Company obtain its listing on Nasdaq, or (iii) that Mr. Wey or anyone at the Company manipulated the Company's stock price.¹⁴ Blank Rome recommended certain actions to enhance the Company's internal controls, and the Company's Board passed resolutions implementing those recommendations.¹⁵

In its brief and responses to Staff's information requests, the Company also addressed the events surrounding BDO's resignation as its auditor. It asserted that two days after receiving BDO's March 15, 2016 letter requiring that Mr. Kang be separated from the Company, the Board held a meeting at which Mr. Kang explained that he declined to resign because it was not in the best interests of the Company or its shareholders that he do so, and because he had done nothing wrong.¹⁶ At the same Board meeting, the Audit Committee Chair, Mr. Hartung, made a motion to terminate Mr. Kang, but the motion was not seconded and thus not voted upon by the Company's other two independent directors (the Company had a total of four directors, including Mr. Kang).¹⁷ Mr. Hartung then resigned as a director and as Chair of the Audit Committee on March 17, 2016, effective April 16, 2016, and BDO resigned as the Company's auditor by letter dated March 17, 2016.¹⁸

In a letter to the Company dated March 21, 2016, BDO outlined a number of material weaknesses and other reportable concerns that it observed prior to its resignation.¹⁹ Among other things, BDO reported that it had learned that Mr. Kang had various uncompensated advisors, including Mr. Wey, and that those relationships and services were not accounted for or

dated April 25, 2016; Company Response to April 15, 2016 Information Request, dated April 25, 2016.

¹³ Company Brief at 5.

¹⁴ Blank Rome LLP, Audit Committee of 6D Global Technologies, Inc., Presentation to the Nasdaq Listing Qualifications Panel, dated Feb. 26, 2016 ("Blank Rome Report"), Ex. A to Company Brief, at 10-22.

¹⁵ Blank Rome Report at 23-26.

¹⁶ Company Brief at 6; Company Response to March 22, 2016 Information Request, dated April 25, 2016 at 4.

¹⁷ Company Br. at 6; Company Response to March 22, 2016 Information Request, dated April 25, 2016 at 5.

¹⁸ Company Br. at 6; Company Response to March 22, 2016 Information Request, dated April 25, 2016 at 5.

¹⁹ Letter from BDO to the Company, dated March 21, 2016, Ex. 16.2 to the Company's Form 8-K, filed March 23, 2016 ("BDO Letter").

disclosed in the Company's financial statements.²⁰ BDO also noted that during the course of the Section 10A investigation, a number of inconsistencies were noted and BDO had concluded that it could no longer rely on the representations provided by Mr. Kang. BDO cited three non-exclusive examples of such inconsistencies:

1. As per conversations with the then Audit Committee Chair ("AC Chair"), Adam Hartung, he inquired with the CEO in July 2015 as to Benjamin Wey's involvement with the Company since Mr. Wey was found guilty of civil charges for sexual misconduct with an intern at NYGG. The Board of Directors was told by the CEO that Mr. Wey was friendly with the CEO but he was not involved with the Company. When the Board inquired again at the September 2015 Board meeting, they learned that Mr. Wey was meeting regularly at the 6D office and was advising the CEO on a regular basis. Additionally, in July 2015, the Company granted non-qualified stock options to [two individuals] who are not employees of the Company [but rather, according to Board minutes, affiliated with NYGG]. It was at the September 25, 2015 meeting that the Board passed a resolution that the Company cease all interactions with Mr. Wey and NYGG.
2. As per conversations with the then AC Chair, he noted that the Board informed management in September 2015 that it did not support an expansion into Ireland and recommended it be dropped. The Company established a subsidiary in Ireland in late 2015. Additionally, per support provided by management as it relates to Mr. Wey's consultations with the CEO, Mr. Wey made introductions between the CEO and Mr. Wey's Ireland contacts in April 2015.
3. As noted in the [Blank Rome Report] . . . , "our investigation revealed that Mr. Kang was unsure who paid for Mr. Wey's trip to visit Discover Growth Fund." As per conversations with the then AC Chair, he was also informed by management that the CEO was unsure who paid for these expenses. As per support provided by Mark Szykowski, CFO, to us in March 2016 these expenses were charged to the CEO's credit card and reimbursed in 2015.²¹

BDO also identified four material weaknesses in the Company's internal controls over financial reporting, including that the "Company did not appear to have an effective Board of Directors that demonstrates independence from management and exercises oversight responsibility and has the ability to discharge its responsibilities."²² In that regard, BDO noted that "[t]he Board of Directors (made up of all the members of the Audit Committee plus the CEO) was not familiar with the nature and extent to which Mr. Wey was providing advice to the

²⁰ BDO Letter at 2.

²¹ BDO Letter at 2-3.

²² BDO Letter at 3.

CEO or to the extent that the CEO consults with outside advisors. Additionally, the Audit Committee provided management with direction as to not expand into Ireland which management subsequently did anyway.”²³

Finally, BDO cautioned that

its report on the Company’s financial statements for the fiscal year ended December 31, 2014 should no longer be relied upon, and the completed interim reviews related to the previously issued financials for the periods September 30, 2014, March 31, 2015, June 30, 2015 and September 30, 2015 should also not be relied upon, because they did not reflect expenses associated with stock grant agreements the CEO had entered into with various employees and consultants, of which BDO was previously unaware, and because BDO could not rely on representations provided by Mr. Kang.²⁴

In its brief, the Company asserts that it has engaged a new auditing firm, SingerLewak LLP – which reviewed BDO’s letter and “thoroughly vetted” the Company before accepting the engagement, but which has not yet reached any conclusions or issued audit opinions with respect to the issues identified by BDO – and that the Company would restate its financial statements as appropriate.²⁵ The Company also asserts that “any purported ‘inconsistencies’ reported by BDO were not inaccurate or inconsistent with the Company’s or Mr. Kang’s past or present representation of events.”²⁶ The Company further addresses the issues identified by BDO in its responses to Staff’s supplemental information requests. Of particular note is the Company’s response to BDO’s observation about the Company’s expansion into Ireland over the Board’s objection:

Company management informed the Board on several occasions of its intention to establish a subsidiary in Ireland to support one of its largest clients and to penetrate the European market; two such occasions were documented in Board minutes. At the time of the September 2015 Board meeting, rental properties had been secured for the Irish operating company established in 2014 and applications for necessary employee visas has [*sic*] been initiated. No Board minutes reflect any opposition to the plan. The Company monitors the progress of the expansion on a monthly basis and provides updates to the Board.²⁷

²³ BDO Letter at 3.

²⁴ BDO Letter at 4.

²⁵ Company Brief at 7, 9.

²⁶ Company Brief at 7.

²⁷ Company Response to April 15, 2016 Information Request, dated April 25, 2016, at 6.

Also of note is the Company's response to Staff's question whether the Company – upon identifying evidence that the Company had paid for Mr. Wey's trip to meet with Discover Growth Fund – had informed Blank Rome of such evidence: "During a subsequent call in follow up to the initial interview with Blank Rome [in which Mr. Kang was unsure who paid for Mr. Wey's trip], Mr. Kang informed Blank Rome that the Company had indeed paid for Mr. Wey's trip to meet with the Discover Growth Fund. . . . Mr. Kang offered to submit the supporting documents to Blank Rome during a follow-up call, however, Blank Rome indicated that it did not require them."²⁸

The Company's supplemental submissions also, among other things, describe generally the steps the Company has taken or is contemplating to address BDO's concerns, and the process it followed for identifying its new Audit Committee Chair.²⁹ They also state that because the Audit Committee's engagement of Blank Rome had concluded, neither the Company nor its Board discussed BDO's concerns with Blank Rome, but that "[i]f so requested by the Staff, the Company is willing to re-engage Blank Rome. Blank Rome has indicated its willingness to be so engaged."³⁰

The Company requests that the Listing Council permit it to remain listed on Nasdaq in a suspended state until it files its 2015 Form 10-K and its First Quarter 2016 Form 10-Q, which it anticipates filing by July 15 and 29, respectively.³¹ The Company acknowledges that it is not in compliance with Nasdaq's annual listing fee requirement, and "commits to pay the 2016 annual fee upon reinstatement of trading of its securities."³²

Staff's Brief

Staff argues that the Panel acted well within its discretion under Rule 5101 in light of the concerns with the Company's governance and controls raised by BDO, BDO's demand that Kang be separated from the Company, the response of Kang and the Company's Board, and BDO's resignation.³³ Staff further argues that the Company's submissions regarding these matters provide no comfort that the Company has taken adequate steps to address the issues that gave rise to BDO's resignation and the Panel's decision below.³⁴ Staff also asserts that the Company's failure to file its 2015 10-K and its failure to pay its 2016 listing fee provide additional bases for delisting.³⁵ In addition, Staff cites a recently filed putative class action brought by Company investors against the Company and others, which includes allegations from

²⁸ Company Response to April 15, 2016 Information Request, dated April 25, 2016, at 3.

²⁹ Company Response to March 22, 2016 Information Request, dated April 25, 2016, at 2-4.

³⁰ Company Response to April 15, 2016 Information Request, dated April 25, 2016, at 4-6.

³¹ Company Brief at 9.

³² Company Brief at 9.

³³ Nasdaq Listing Qualifications Department Staff Submission to the Nasdaq Listing and Hearing Review Council, dated May 9, 2016 ("Staff Brief"), at 3-4, 9-10.

³⁴ Staff Brief at 5.

³⁵ Staff Brief at 6-7.

a former Company executive that Wey has been more involved with the Company than the Company and Kang have acknowledged.³⁶

The Company's Reply Brief

In its reply brief, the Company argues that the “allegations raised by the Staff have been determined by independent legal counsel . . . to be without merit,” and that its more recent issues “have since been resolved: the Company has hired SingerLewak . . . as its new independent audit firm and has appointed a new board member . . . who now serves as the Audit Committee Chair.”³⁷ The Company disagrees that the events leading to BDO’s resignation are symptomatic of a weak corporate governance environment; rather, it claims, its steps after BDO’s resignation demonstrate strong corporate governance.³⁸ It asserts that the differing views of the Audit Committee members about Mr. Kang’s decision not to resign reflected a legitimate dispute that was not surprising given that Blank Rome “found no corroborating evidence of the Staff’s theories” and that the BDO letter “rais[ed] certain issues (many of which were manufactured by Mr. Hartung).”³⁹ Thus, the Company contends that the “differing opinions of Blank Rome and BDO” have “already been resolved by the proper vote of the Audit Committee,” and that finding a basis for delisting in spite of that supposed resolution “is highly problematic.”⁴⁰ The Company further asserts that “[i]f there are any unresolved issues raised by BDO, they will necessarily be addressed by the new auditors.”⁴¹

The Company also addresses some of the specific issues raised by BDO and asserted by the Staff as bases for delisting. With respect to the Company’s payment of Mr. Wey’s expenses for his trip to Discover Growth Fund, the Company focuses on the reasonableness of Mr. Kang’s failure to remember who paid for the trip during his interview by Blank Rome.⁴² With respect to the Company’s expansion into Ireland, the Company argues that “contrary to BDO’s (and Mr. Hartung’s) allegation, there are no board minutes evidencing an objection by the board relating to the Company’s plans to expand into Ireland.”⁴³ “It seems logical,” the Company contends, “that had Mr. Hartung, who is the source for this claim, taken this position, he would have certainly made it a discussion item in a board meeting and could have put forth a board resolution on the matter.”⁴⁴ And the Company reiterates that while it and its board “strongly

³⁶ Staff Brief at 7-8 (citing Second Amended Complaint, Doc. No. 107, in Puddu, et al. v. 6D Global Technologies, Inc., et al., Civ. A. No. 15-cv-08061-RWS).

³⁷ Company Submission in Response to Staff Memorandum, dated May 16, 2016 (“Staff Reply Brief”), at 1.

³⁸ Staff Reply Brief at 2.

³⁹ Staff Reply Brief at 3.

⁴⁰ Staff Reply Brief at 3.

⁴¹ Staff Reply Brief at 3.

⁴² Staff Reply Brief at 4.

⁴³ Staff Reply Brief at 4.

⁴⁴ Staff Reply Brief at 4.

believe they have a full factual grasp of the facts and circumstances surrounding the concerns raised by BDO,” it is “fully committed re-engaging legal counsel to further investigate BDO’s concerns should it become evident during the ongoing audit that such additional inquiry is required.”⁴⁵

With respect to the allegations in a new lawsuit concerning Mr. Wey’s involvement in the Company, the Company argues that those allegations are unsubstantiated and disproven by Blank Rome’s report.⁴⁶

The Company contends that it is inequitable to require it to pay the annual listing fee for 2016 until trading of its stock on Nasdaq resumes, and that it expects to file its delayed SEC filings – and regain compliance with Nasdaq’s filing requirements – “in short order.”⁴⁷

Finally, the Company requests that the Listing Council schedule an oral hearing. According to the Company, a hearing would be beneficial because this matter presents “unique circumstances” insofar as the Company’s “Audit Committee accepted the conclusions of the law firm that it had retained to conduct an internal investigation,” and the Staff would have the Audit Committee vote disregarded in favor of the opinion of the Chair only.” Moreover, the Company contends, the impact those circumstances “should have on the proposed delisting is a novel issue” and a matter of great importance to the Company and its shareholders and employees.⁴⁸

Letter from Blank Rome to Nasdaq

In a letter addressed to Nasdaq dated May 17, 2016, which the Company submitted to Nasdaq in connection with this proceeding, Blank Rome disputed the Company’s representations made in this proceeding that the Company had advised Blank Rome that it paid for Mr. Wey’s trip to Discover Growth Fund:

At no time prior to the issuance of Blank Rome’s report to Nasdaq or subsequent to the issuance of the report to Nasdaq did Mr. Kang or anyone at the Company inform Blank Rome or provide information to Blank Rome with regard to who paid for Mr. Wey’s trip to Discover Growth Fund. After Mr. Kang’s interview and before Blank Rome issued its report, certain supplemental information was provided by Mr. Kang to Blank Rome (unrelated to Mr. Wey’s trip expense payment), which Blank Rome accepted.

Separately, the Company dismisses BDO’s concern about the Company’s previously undisclosed stock grant agreements as a “non-issue,” Staff Reply Brief at 4, notwithstanding that the Company might need to restate prior financial statements to account for the agreements.

⁴⁵ Staff Reply Brief at 4-5.

⁴⁶ Staff Reply Brief at 6.

⁴⁷ Staff Reply Brief at 5, 8.

⁴⁸ Staff Reply Brief at 8.

Blank Rome did subsequently learn that the Company provided information to BDO demonstrating that the Company paid for Mr. Wey's trip to Discover Growth Fund, and such information was also transmitted to Nasdaq.⁴⁹

Blank Rome also took issue with the Company's suggestion that it was necessarily willing to be re-engaged if requested by Nasdaq Staff: "[S]hould Blank Rome be requested to perform additional services for the Company, it would consider the request at such time."⁵⁰

In its e-mail transmitting the Blank Rome letter to Nasdaq, the Company describes the letter as raising a "factual discrepancy."⁵¹ Staff, however, argues that the Blank Rome letter reveals misrepresentations that are "contrary to the Company's obligation to provide full information to Nasdaq that is not misleading," and that demonstrate a continuing pattern of "conduct that is contrary to the public interest and contrary to maintaining a listing on Nasdaq."⁵²

Additional Staff Determinations

On April 12, 2016, Nasdaq issued an Additional Staff Determination arising from the Company's failure timely to file its 2015 Form 10-K as required by Nasdaq Rule 5250(c)(1), and the Company's failure to pay its annual listing fees as required by Nasdaq Rule 5250(f).⁵³

On May 17, 2016, Nasdaq issued another Additional Staff Determination. That letter advised the Company that its failure timely to file its Form 10-Q for the first quarter of 2016 is an additional basis for delisting under Rule 5250(c)(1). It further advised the Company that it had fallen out of compliance with Nasdaq's listing rules requiring securities to maintain a minimum bid price of \$1 per share and a minimum Market Value of Listed Securities of \$35 million, and that the rules provide the Company 180 days to regain compliance with those requirements.⁵⁴

Decision

As set forth in Nasdaq Rule 5101, Nasdaq "has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote

⁴⁹ Letter from Blank Rome LLP to Nasdaq Listing Qualifications Department, dated May 17, 2016, at 2 ("Blank Rome Letter").

⁵⁰ Blank Rome Letter at 2.

⁵¹ E-mail from Company Representatives to Nasdaq Listing Qualifications Department, dated May 17, 2016.

⁵² E-mail from Staff to Nasdaq Listing Qualifications Department, dated May 18, 2016.

⁵³ Additional Staff Determination: Filing Delinquency, dated April 12, 2016.

⁵⁴ Additional Staff Determination: Filing Delinquency; Deficiency Notification – Market Value of Listed Securities and Bid Price, dated May 17, 2016.

just and equitable principles of trade, and to protect investors and the public interest.”⁵⁵ That authority derives directly from the regulatory responsibilities delegated to Nasdaq by Congress through the Exchange Act. Nasdaq is a self-regulatory organization (“SRO”) registered as a national securities exchange under Section 6 of the Exchange Act.⁵⁶ The Exchange Act establishes a system of cooperative regulation under which private SROs like Nasdaq conduct the day-to-day regulation and administration of the nation’s securities markets under the close supervision of the SEC. Before it may permit the registration of an exchange as an SRO, the SEC must determine, among other things, that the exchange has a set of rules that are “consistent with the requirements” of the Exchange Act,⁵⁷ and thus that are designed

to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest⁵⁸

With respect to the listing of companies on Nasdaq, Rule 5101 explains:

Nasdaq is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Nasdaq stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives.⁵⁹

Thus, Nasdaq may exercise its discretion to delist securities under Rule 5101 “based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq.” *Id.*

⁵⁵ Nasdaq Rule 5101.

⁵⁶ See 15 U.S.C. §§ 78f & 78c(a)(26); *Findings, Opinion, and Order of the Comm’n*, Exch. Act Rel. No. 53,128 (Jan. 13, 2006), 71 Fed. Reg. 3,550 (Jan. 23, 2006).

⁵⁷ 15 U.S.C. §78s(b)(2).

⁵⁸ 15 U.S.C. § 78f(b)(5).

⁵⁹ Nasdaq Rule 5101. See also *Sparta Surgical Corp. v. Nat’l Ass’n of Sec. Dealers*, 159 F.3d 1209, 1214 (9th Cir. 1998) (listing of a security on Nasdaq “creates the public expectation that the company meets minimum financial criteria, as well as embrac[es] ‘integrity and ethical business practices’” (quoting 59 Fed. Reg. 29,834, 29,843 (1994))).

The Listing Council finds that the circumstances presented here readily justify delisting pursuant to Rule 5101. The conduct of the Company and its Board with respect to the Company's independent auditor, the Audit Committee's independent counsel, and Nasdaq is inconsistent with the standards of Rule 5101 and the regulatory objectives Nasdaq must consider when determining whether a company should be listed on its market. Likewise, the Listing Council agrees with the Panel that the events giving rise to BDO's resignation as the Company's auditor warrant delisting the Company to protect the investing public and the integrity of the market. The recent revelations that the Company misrepresented facts to Nasdaq in this very proceeding further underscore the problems identified by BDO and the Panel, as well as the public interest in delisting.

The Listing Council is not persuaded by the Company's argument that the Board's decision not to remove Mr. Kang reflects good governance. A reputable independent auditor concluded – based on a number of verifiable factors, not just the word of one director – that it could no longer accept the representations of the Company's Chairman and CEO, and determined that it could not continue as the Company's auditor unless Mr. Kang was separated from the Company.⁶⁰ The Company's bald assertions that the inconsistencies BDO cited as the basis for its conclusion were not, in fact, inconsistencies⁶¹ give the Listing Council no basis to disregard BDO's extraordinary conclusion that the Company's Chairman and CEO is untrustworthy.

Nor has the Company provided any basis for the Listing Council to disregard BDO's finding that the Company does not appear to have an effective Board with the ability to discharge its responsibilities. In its attempt to refute BDO's finding that the Company expanded into Ireland over the Board and/or the Audit Committee's prior direction not to do so, the Company proffers no evidence to support its position, and avoids denying that the Board or the Audit Committee opposed the expansion; it asserts only that such opposition is not reflected in the Board meeting minutes. The Listing Council draws no comfort from that narrow assertion. The Listing Council also finds it telling that the Company did not re-engage independent counsel to investigate the very serious concerns that BDO presented to the Company in March 2016.

Equally troubling from the perspective of Nasdaq, which must make the regulatory decision whether to allow the Company to remain listed on its market, is persuasive evidence from the Company's independent counsel, Blank Rome, that the Company made misrepresentations to Nasdaq in its effort to remain listed.⁶² Regardless of the nature of the underlying factual issue (the Company's payment for Mr. Wey's visit to Discover Growth Capital), the Company's misrepresentations in its submissions to Nasdaq in the delisting process call into question the ability of Nasdaq and other regulators to rely on information provided by the Company.

The Company's failures to comply with the filing and annual fee requirements of Nasdaq Rules 5250(c)(1) and 5250(f) provide additional grounds for delisting. Particularly in light of the

⁶⁰ See BDO Letter.

⁶¹ Company Brief at 7.

⁶² Blank Rome Letter at 2.

serious concerns and deficiencies described above, and the uncertainty of the outcome of the work of the Company's new auditors, the Listing Council rejects the Company's request that the Listing Council permit it to remain listed in a suspended state through the July dates by which it anticipates filing its 2015 Form 10-K and First Quarter 2016 Form 10-Q. Moreover, the Company is obligated to comply with Nasdaq's listing requirements as set forth in Nasdaq's rules, regardless of whether the Company contends that the application of any of those requirements is inequitable, as the Company contends with respect to the fee requirement⁶³; this is not the appropriate forum for challenging Nasdaq's rules. Should the Company come into compliance with the filing requirements and remedy the other deficiencies now extant, it can reapply for listing at that time.

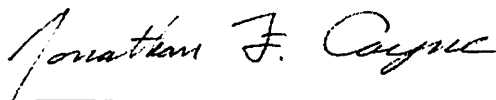
In light of all the foregoing, the Listing Council need not reach the other issues that formed the basis of Staff's initial delisting decision, or that Staff has asserted as additional grounds for delisting, including Mr. Wey's influence over the Company and potential stock manipulation.

Finally, the extensive written record in this matter provides a sufficient basis for this decision. No unique or other circumstances suggest that an oral hearing would better enable the Listing Council to decide this appeal.

* * *

The Listing Council concludes that the continued listing of the Company on The Nasdaq Stock Market would be inconsistent with Nasdaq Rules 5101, 5250(c)(1), and 5250(f), the maintenance of the quality of and public confidence in The Nasdaq Stock Market, the promotion of just and equitable principles of trade, and the protection of investors and the public interest. The Listing Council therefore affirms the March 24, 2016 Panel Decision to delist the Company from The Nasdaq Stock Market.⁶⁴

On Behalf of the Nasdaq Listing and Hearing Review Council,



Jonathan F. Cayne, Senior Associate General Counsel

⁶³ See, e.g., Nasdaq Rules 5801 *et seq.*; The Nasdaq Stock Market LLC Listing Agreement.

⁶⁴ The Nasdaq Board of Directors may call the Listing Council Decision for review pursuant to Rule 5825.

Exhibit B



Jonathan F. Cayne
Senior Associate General Counsel
805 King Farm Boulevard
Rockville, MD 20850
Direct: +1 301 978-8493
Fax: +1 301 978-8472

Via Electronic Mail

June 20, 2016

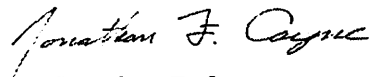
David A. Donohoe, Jr.
President
Donohoe Advisory Associates LLC
9901 Belward Campus Drive, Suite 175
Rockville, MD 20850

RE: Docket No. NQ 6119C-16: 6D Global Technologies, Inc.

Dear Mr. Donohoe:

Enclosed herewith is the decision of the Nasdaq Listing and Hearing Review Council in connection with the above-referenced matter. Pursuant to Nasdaq Rule 5825(a), the Board of Directors of the Nasdaq Stock Market LLC may call this decision for review in connection with an upcoming Nasdaq Board meeting.

Sincerely,


Jonathan F. Cayne

cc: Stanley Higgins – Listing Qualifications
Alan Rowland – Listing Qualifications
Katherine Roberson Petty – Donohoe Advisory Associates LLC

Exhibit C



Jonathan F. Cayne
Senior Associate General Counsel
805 King Farm Boulevard
Rockville, MD 20850
Direct: +1 301 978-8493
Fax: +1 301 978-8472

November 28, 2016

Via Electronic Mail

6D Global Technologies, Inc.

c/o David A. Donohoe, Jr.
Donohoe Advisory Associates LLC
9901 Belward Campus Drive, Suite 175
Rockville, MD 20850

RE: Docket No. NQ 6119C-16: 6D Global Technologies, Inc.

Dear Mr. Donohoe:

This is to inform you that The NASDAQ Stock Market, LLC ("Nasdaq") Board of Directors has declined to call for review the June 16, 2016 decision of the Nasdaq Listing and Hearing Review Council (the "Listing Council") in the above-referenced matter. Accordingly, pursuant to Nasdaq Rule 5825, the decision of the Listing Council represents Nasdaq's final action in this matter.

The Company may appeal this decision to the Securities and Exchange Commission ("SEC") as provided by Rule 420 of the SEC Rules of Practice.

Any notice required to be served upon Nasdaq pursuant to the SEC rules may be directed to my attention at:

Office of Appeals and Review
The NASDAQ Stock Market, LLC
805 King Farm Boulevard
Rockville, MD 20850

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The telephone number of that office is (202) 551-5400.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan F. Cayne".

Jonathan F. Cayne

Exhibit D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 25

OMB APPROVAL	
OMB Number:	3235-0080
Expires:	March 31, 2018
Estimated average burden hours per response:	1.7

NOTIFICATION OF REMOVAL FROM LISTING AND/OR REGISTRATION
UNDER SECTION 12(b) OF THE SECURITIES EXCHANGE ACT OF 1934.

Commission File Number 001-35002

Issuer: 6D Global Technologies, Inc
Exchange: NASDAQ Stock Market LLC

(Exact name of Issuer as specified in its charter, and name of Exchange where security is listed and/or registered)

Address: 17 State Street, Suite 450
New York NEW YORK 10004
Telephone number: 212-519-5109

(Address, including zip code, and telephone number, including area code, of Issuer's principal executive offices)

Common Stock

(Description of class of securities)

Please place an X in the box to designate the rule provision relied upon to strike the class of securities from listing and registration:

17 CFR 240.12d2-2(a)(1)

17 CFR 240.12d2-2(a)(2)

17 CFR 240.12d2-2(a)(3)

17 CFR 240.12d2-2(a)(4)

Pursuant to 17 CFR 240.12d2-2(b), the Exchange has complied with its rules to strike the class of securities from listing and/or withdraw registration on the Exchange. ¹

Pursuant to 17 CFR 240.12d2-2(c), the Issuer has complied with its rules of the Exchange and the requirements of 17 CFR 240.12d-2(c) governing the voluntary withdrawal of the class of securities from listing and registration on the Exchange.

Pursuant to the requirements fo the Securities Exchange Act of 1934, NASDAQ Stock Market LLC certifies that it has reasonable grounds to believe that it meets all of the requirements for filing the Form 25 and has caused this notification to be signed on its behalf by the undersigned duly authorized person.

2016-12-09 By Jonathan Cayne Sr Assoc Gen Counsel
Date Name Title

1 Form 25 and attached Notice will be considered compliance with the provisions of 17 CFR 240.19d-1 as applicable. See General Instructions.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB Number.