

Paula D. Shaffner

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August 11, 2017

via hand delivery

Brent J. Fields, Esq.
Secretary
United States Securities and
Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

**Re: In the Matter of 6D Global Technologies, Inc.
Administrative Proceeding File No. 3-17908**

Dear Mr. Fields:

Our firm represents 6D Global Technologies, Inc. ("6D"). I am writing to inform the Securities and Exchange Commission (the "Commission") of the most recent critical action that undermines completely the position of the Nasdaq Stock Market, LLC ("Nasdaq") in this matter.¹ The criminal charges against Benjamin Wey have now been dismissed. Those charges were the central focus of NASDAQ's decision to delist 6D. The wisdom of the legal prohibition against relying on mere allegations in a case such as this has now been graphically and profoundly proven correct. The only remedy sufficient to undo the significant and crippling harm which has been done to 6D is to reverse the decision to delist.

On August 8, 2017, the Government filed a nolle prosequi in the criminal action against Wey, which "dismiss[ed] the charges pending against Wey" and "dispose[d] of th[e] case" against Wey. See U.S. v. Wey, No. 15-cr-00611, Nolle Prosequi (SDNY August 8, 2017),

¹ This authority constitutes additional material which further supports 6D's Opposition Brief to the Motion to Dismiss the Application for Review of, as well as the issues identified in its Application for Review, and which the Commission should consider pursuant to 17 C.F.R. § 201.421(b). The relevant factual background and procedural history is set forth in my letter to the Commission dated June 21, 2017, which is incorporated herein by reference.

attached hereto as Exhibit 1.² The dismissal of all of the criminal charges against Wey – which were the impetus for Nasdaq’s delisting process and which poisoned the entire process for 6D – demonstrates the precise reason why Nasdaq should never have used unproven allegations in halting 6D’s trading and in its delisting determination. The Commission’s own precedent does not permit facts to be adjudicated on the basis of mere allegations.³ By using the unproven allegations against Wey and insinuating guilt by association, Nasdaq put into motion a series of events that led to devastating consequences for 6D, which trampled on 6D’s rights without care and without a careful consideration of the posture of the charges and claims at issue that are now known to have a complete lack of foundation.

Nasdaq’s entire reason for the delisting determination stemmed from Wey and the charges against him. In fact, during Nasdaq’s brief presentation before the Nasdaq Listing Qualifications Hearing Panel (the “Hearing Panel”), Nasdaq referenced Wey by name no less than 40 times, devoting nearly its entire presentation to Wey, the charges against him, and his relationship with 6D. (See Transcript of the Nasdaq Listing Qualifications Hearing Panel for 6D Global Technologies, Inc., at pp. 79-94 (Jan. 21, 2016) (“Hearing Transcript”), attached hereto as Exhibit 4). Nasdaq’s hostility with respect to Wey is obvious and palpable throughout this transcript and otherwise. Rather than allowing 6D to be judged on its own merit as the independent business that it is, Nasdaq attempted to try to tar 6D with the same brush, even going so far as to claim that “Ben Wey is part of the DNA of this company.” (*Id.* at 83:11-12).

Furthermore, Nasdaq’s sole focus on Wey and the charges against him in seeking 6D’s delisting was crystal clear from the beginning of its argument where Nasdaq stated:

Now, if you try to focus on all of these factors you're going to get lost in all the minutia, so you're going to lose sight of what really is at the heart of this matter. When making a determination in this

² The civil claims against Wey may be dismissed as well. In the Commission’s action against Wey, the Commission filed a letter with the Court in June 2017, identifying the suppression order and stating that the Commission was “evaluating how the order in the criminal case may impact this action,” particularly in light of whether the Government planned to appeal the suppression order. See *SEC v. Wey et al.*, No. 15-cv-7116, Letter of Derek Bentsen, Assistant Chief Litigation Counsel of the Commission (S.D.N.Y. June 21, 2017), attached hereto as Exhibit 2. Since the dismissal of the charges, the Commission has filed a letter with the Court, stating that the Commission is evaluating the suppression order and the Government’s decision not to appeal the order and “request[ing] additional time, until September 8, 2017, to advise the Court whether the SEC will seek leave to file any motions as a result of the suppression order in the criminal case.” See *SEC v. Wey et al.*, No. 15-cv-7116, Letter of Derek Bentsen, Assistant Chief Litigation Counsel of the Commission (S.D.N.Y. August 10, 2017), attached hereto as Exhibit 3. It is entirely possible that the SEC may dismiss its claims against Wey as well.

³ See, e.g., *In re Weeks*, Release No. 199 (S.E.C. Feb. 4, 2002) (“It is inappropriate for the Division to assert, as if it were an adjudicated fact, that Hesterman and Kenneth Weeks controlled Pan World at the time that the company was selling unregistered securities.”); *In re H.J. Meyers & Co.*, Release No. 211 (S.E.C. Aug. 9, 2002) (“The Division has repeatedly cited from the Florida complaint, as if that document contained adjudicated facts . . . In reality, the Florida complaint was simply a collection of allegations that were never proven.”); *id.* (“Like the 1990 Florida complaint, the 1994 NASD complaint is not entitled to any weight here.”).

case you should look at the bigger picture and focus on the primary, over-arching issue. *That issue is whether or not it is appropriate to delist the company based on the criminal and civil charges against Ben Wey and his affiliates given their extensive relationship with the company.*

(Hearing Transcript, at 79:12-22 (emphasis added)). It was also clear from the conclusion of Nasdaq's presentation before the Hearing Panel that the entire basis for the proceeding was due to the charges against Wey in which Nasdaq stated:

So getting back to what our initial question was, *is it appropriate to delist the company based on the criminal and civil charges against Ben Wey and his affiliates given their extensive relationship with the company?* As we have demonstrated here today, as well as in our written submissions, the answer to that question is *yes. As such, we believe the appropriate determination is to delist the company's securities from NASDAQ.*

(Id. at 94:11-20 (emphasis added)). While Nasdaq more recently seeks to claim that the delisting proceedings were not about Wey and the charges against, that position is absurd. The Government's decision to dispose of its charges against Wey completely are yet further extraordinary circumstances permitting the Commission to review the Application for Review of 6D under 17 C.F.R. § 201.420(b).

As a result, we respectfully request that the Commission consider the dismissal of the criminal charges against Wey pursuant to 17 C.F.R. § 201.421(b) in reaching a conclusion as to Nasdaq's Motion to Dismiss because these decisions are further extraordinary circumstances warranting the review of 6D's Application for Review under 17 C.F.R. § 201.420(b). The catastrophic series of events precipitated by Nasdaq's delisting were wholly unnecessary and cannot be permitted to stand.

Furthermore, in light of this new evidence, we further request that Nasdaq list 6D immediately, and should Nasdaq agree to list 6D immediately, 6D will agree to withdraw its appeal before the Commission.

I appreciate your prompt attention to this matter.

Respectfully,



Paula D. Shaffner

Brent J. Fields
August 11, 2017
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cc: Edward S. Knight, Esq. (via hand delivery)
John M. Yetter, Esq. (via hand delivery)
Arnold Golub, Esq. (via hand delivery)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-v.- :

NOLLE PROSEQUI

BENJAMIN WEY, :

15 Cr. 611 (AJN)

a/k/a "Benjamin Wei," :

a/k/a "Tianbing Wei," and :

SEREF DOGAN ERBEK, :

a/k/a "Dogan Erbek," :

Defendants. :

- - - - - x

1. The filing of this nolle prosequi will dispose of this case against BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant.

2. On September 8, 2015, Indictment 15 Cr. 611 (AJN) was filed, which charged that BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," and SEREF DOGAN ERBEK, a/k/a "Dogan Erbek," the defendants, conspired to commit securities fraud and wire fraud, in violation of Title 18, United States Code, Section 371 (Count One); committed securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Count Two); committed securities fraud in violation of Title 18, United States Code, Sections 1348 and 2 (Count Three); committed wire fraud, in

violation of Title 18, United States Code, Sections 1343 and 2 (Count Four); failed to disclose to the Securities and Exchange Commission (the "SEC") ownership in excess of five percent of certain stocks, in violation of Title 15, United States Code, Sections 78m(d) and 78ff, Title 17, Code of Federal Regulations, Sections 240.13d-1, and Title 18, United States Code, Section 2 (Counts Five and Six); and money laundering, in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2 (Counts Seven and Eight).

3. On June 13, 2017, the Court granted a motion, filed by BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, to suppress evidence seized during a search of WEY's apartment and the New York offices of New York Global Group, Inc.

4. The Government sought charges in this matter based in significant part on materials seized during those searches. Because the Government can no longer rely on that evidence at trial against BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, the Government has decided to dismiss the charges pending against Wey.

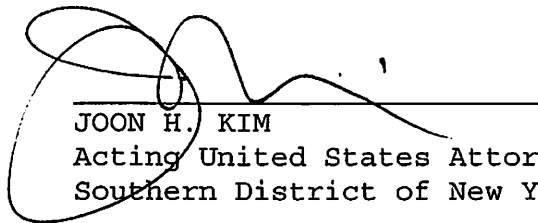
5. Accordingly, the Government recommends that an order of nolle prosequi be filed as to BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, in the above-captioned matter.

Brooke E. Cucinella

BROOKE E. CUCINELLA
BRENDAN QUIGLEY
P. IAN McGINLEY
Assistant United States Attorneys
Tel.: (212) 637-2477/2190/2257

Dated: New York, New York
August 8, 2017

Upon the foregoing recommendation, I hereby direct, with leave of the Court, that an order of nolle prosequi be filed as to BENJAMIN WEY, a/k/a "Benjamin Wei," a/k/a "Tianbing Wei," the defendant, with respect to Indictment 15 Cr. 611 (AJN).



JOON H. KIM
Acting United States Attorney
Southern District of New York

Dated: New York, New York
August 8, 2017

SO ORDERED:

HONORABLE ALISON J. NATHAN
United States District Judge
Southern District of New York

Dated: New York, New York
August __, 2017

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
DIVISION OF ENFORCEMENT
100 F STREET, N.E.
WASHINGTON, D.C. 20549-4631



Derek S. Bentsen
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June 21, 2017

Via ECF

The Honorable P. Kevin Castel
United States District Judge for the Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Securities and Exchange Commission v. Wey, et al.*, 15-cv-7116-PKC (SDNY)

Dear Judge Castel:

We write to inform the Court of a recent decision in the related criminal matter. On June 13, 2017, Judge Nathan issued an opinion and order suppressing all evidence seized during the execution of search warrants at defendants Benjamin and Michaela Wey's residence and New York Global Group's offices. *See United States v. Wey*, 15-cr-611 (AJN), Dkt. No. 114. The Department of Justice has not yet indicated whether it intends to appeal this decision.

The Commission is evaluating how the order in the criminal case may impact this action. Once we are informed of Department of Justice's decision regarding appeal, we will update the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Bentsen".

Derek S. Bentsen

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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August 10, 2017

Via ECF

The Honorable P. Kevin Castel
United States District Judge for the Southern District of New York
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Securities and Exchange Commission v. Wey, et al.*, 15-cv-7116-PKC (SDNY)

Dear Judge Castel:

On June 21, 2017, counsel for the SEC filed a letter informing the Court that Judge Nathan had issued an order in the criminal case of *United States v. Wey, et al.*, suppressing all of the evidence recovered during the execution of search warrants at Defendant Benjamin Wey's residence and New York Global Group's offices. Dkt. No. 157. On August 8, 2017, the U.S. Attorney's Office dismissed the indictment against Wey. *United States v. Wey*, 15-cr-611-AJN (S.D.N.Y), Dkt. No. 129. The indictment against Defendant Seref Dogan Erbek remains pending.

Counsel for the SEC are continuing to evaluate and consult with our client, the Commission, about the impact of Judge Nathan's order and the decision of the U.S. Attorney's Office not to appeal that order on the case against each of the defendants in this instant action. We request additional time, until September 8, 2017, to advise the Court whether the SEC will seek leave to file any motions as a result of the suppression order in the criminal case.

Sincerely,

A handwritten signature in black ink, appearing to read "D. S. Bentsen".

Derek S. Bentsen