UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16795

In the Matter of
JOSEPH J. FOX,
Respondent.

Respondent Fox's Motion to Correct Manifest Errors

Pursuant to 17 C.F.R. § 201.111, Respondent Fox files this Motion to Correct Manifest Errors.

Initial Decision:

> Respondent Joseph J. Fox consented to the entry of an order issued by the Securities and Exchange Commission finding that he willfully violated Section 5(a) and (c) of the Securities Act of 1933, and he was ordered to cease and desist from committing such violations and to pay disgorgement and civil penalties.

Respondent Fox:

The Initial Order fails to mention that I only consented to the term "willful" because of the added footnote (which he fails to include).

Footnote: ***"A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "'also be aware that he is violating one of the Rules or Acts.'" Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965))."***

Initial Decision:

> This proceeding was then held to determine what, if any, additional non-financial remedial sanctions under Section 15(b)(6) of the Securities Exchange Act of 1934 are in the public interest. In this initial decision, I grant the Division of Enforcement's motion for summary disposition and find that it is in the public interest that Fox be barred for five years from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of penny stock.

Respondent Fox:

On March 16, 2016, Judge Elliot DENIED the Divisions Motion for Summary Disposition. In regard to the two public interest factors where "*there is no genuine dispute about the facts*

themselves[1]*"*:

1) "<u>the degree of scienter involved</u>" – Judge Elliot ruled that he "*must view these facts in the light most favorable to Respondent*"

During the March 21, 2016 preconference hearing, which followed the March 15, 2016 denial of the Motion for Summary Disposition, Assistant Director Ms. McKinley made the following admission: "*As far as other documents, there really aren't any other documents that we think would assist you with any finding on scienter.*"

Judge Elliot concluded: "*As for scienter, Mr. Fox has convinced me that I've given the Division two bites at the apple, and I think that's enough. I don't really think that I need any more evidence on this. It sounds like Ms. McKinley's characterization of Mr. Fox's investigative testimony, that even if I were to look at the investigator's testimony, it would not be particularly enlightening.*"

If the ALJ ruled that there was n scienter on March 15, 2016 and denied the motion for Summary Disposition, and the SEC admitted that there was no new evidence on the issue of scienter, it is striking the ALJ revered his prior ruling on scienter with no evidentiary basis.

2) "<u>likelihood that his occupation will present opportunities for future violations</u>" - Judge Elliot ruled that "*the present record, viewed in the light most favorable to Respondent*"

During the preconference hearing on March 21, 2016, Judge Elliot did not receive any additional information that would have changed his view on this Steadman factor:

Judge Elliot: "*I'm inclined to accept Mr. Fox's representations about his plans, the current status of his licenses, the current status of his company, and his asserted lack of interest in participating in the securities industry. So I'm going to take that as true and offer that public interest factors. Is there an objection to that from the Division?*"

Assistant Director Ms. McKinley responded with: "*No, Your Honor.*"

> **Judge Elliot concluded: "*So I'm going to accept as true what I will call the occupational evidence that Mr. Fox has given me today. And on that understanding, the question then is, do I need any more briefing on that? I think the answer is no.*"**

<u>Initial Decision:</u>

> On September 8, 2015, the Commission issued an order instituting administrative and cease-and-desist proceedings (OIP) against Fox, pursuant to Section 8A of the Securities Act and Section 15(b) of the Exchange Act. The OIP alleges that Fox violated Section 5(a) and (c) of the Securities Act by selling shares of Ditto Holdings, Inc., of which he was CEO, without either registering the shares or meeting the

[1]I do not agree with Judge Elliot's comment in his March 16, 2016 Order DENYING the Motion for Summary Disposition that there is "*no genuine dispute about the facts*" as it pertains to the first four Steadman factors. In fact, the transcript from the preconference hearing on March 21, 2016 clearly shows that there is a dispute about "*the egregiousness of Respondent's actions*", "*sincerity of Respondent's assurances against future violations*" and "*recognition of the wrongful nature of his conduct*".

requirements for an exemption from registration. OIP at 2, 4-5. The OIP followed Fox's submission, and the Commission's acceptance, of an offer of settlement, pursuant to which Fox was ordered to pay monetary sanctions and cease and desist from violations of Securities Act Section 5(a) and (c). *Id.* at 1, 5. Fox agreed that, solely for purposes of determining additional non-financial sanctions, the allegations of the OIP "shall be accepted as and deemed true by the hearing officer." *Id.* at 6-7. The OIP provides that the issues raised in this proceeding may be determined "on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence." *Id.* at 7.

On November 6, 2015, the Division filed a motion for summary disposition, to which were attached a declaration and two exhibits. On January 12, 2016, Fox filed an opposition to the motion, accompanied by seven exhibits, and on January 15, the Division filed a reply. After reviewing the parties' papers, I determined that my evaluation of the public interest factors outlined in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), would be aided by additional information regarding Fox's scienter, if any. *Joseph J. Fox*, Admin. Proc. Rulings Release No. 3514, 2016 SEC LEXIS 171 (ALJ Jan. 15, 2016). The Division filed a supplemental brief addressing the issue of scienter on February 4, and Fox filed a reply with three exhibits on February 26, 2016.

Respondent Fox:

The Initial Order is missing the fact that on March 16, 2016, Judge Elliot entered an order DENYING the Motion for Summary Disposition (albeit without prejudice). As stated above, no additional information came to light that could have moved the court to determine that it was in the publics best interest to impose a collateral bar on m .

Initial Decision:

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). In accordance with the OIP's instructions, I accept and deem true the factual allegations in the OIP. OIP at 6-7. I have also considered stipulations and admissions made by Fox, uncontested affidavits, and facts officially noticed pursuant to 17 C.F.R. § 201.323. *See* 17 C.F.R. § 201.250(a). The filings, documents, and exhibits of record have been fully reviewed and carefully considered. Preponderance of the evidence has been applied as the standard of proof. *See Steadman*, 450 U.S. at 101-04. All arguments and proposed findings and conclusions that are inconsistent with this initial decision have been considered and rejected.

Fox, age 49 at the time the OIP was issued, is a resident of Los Angeles, California. OIP at 2. He is the CEO of Ditto Holdings, Inc., a Delaware corporation which previously maintained offices in Los Angeles and Chicago. *Id.*; Prehearing Tr. 17. Ditto Holdings owns 100% of Ditto Trade, Inc., an Illinois corporation headquartered in Chicago. OIP at 2. Ditto Trade was a registered broker-dealer from July 2010 to December 18, 2015, when it withdrew its registration. *Id.*; Ditto Trade, Inc. Broker Check report at 2.[1] Fox was CEO of Ditto Trade from its inception until December 2014. OIP at 2. He was also a registered representative with Ditto Trade from 2010

to December 2014, when he voluntarily withdrew his broker's license. *Id.* While Fox has held Series 7, 24, 27, 28, and 63 licenses at various points in his career, he currently has no active licenses. Prehearing Tr. 21-22, 32; Joseph J. Fox Broker Check report at 3. Ditto Holdings is no longer operating and has several judgments from creditors outstanding against it. Prehearing Tr. 17, 32.

From April 2009 to September 2013, Ditto Holdings raised approximately $10 million from more than two hundred U.S. investors through a series of common and preferred stock offerings. OIP at 2. Fox played an integral role in these capital-raising efforts, helping determine the timing and terms of the offerings, the types of securities offered, and the manner in which the offerings were communicated to potential investors. *Id.* The purchasers of Ditto Holdings stock ultimately included both accredited and non-accredited investors. *Id.* at 2-3. Accordingly, in order for the offerings to qualify for an exemption to registration under Rule 506 of Regulation D, the exemption Fox attempted to utilize, all of the non-accredited investors should have received certain financial statements and information regarding Ditto Holdings.

Respondent Fox:

This is a factual mischaracterization of the OIP. Judge Elliot is intimating that all $10 million was sold in offerings where there were both accredited and non-accredited investors. That is incorrect. The Series A round where Ditto Holdings raised $1.7 million, was from accredited investors only.

Initial Decision:

See 17 C.F.R. §§ 230.502(b), .506(b); *see, e.g.,* Form D filed by Ditto Holdings on June 27, 2013.[2] But Ditto Holdings did not maintain a complete and accurate set of financial records, did not regularly prepare financial statements, and was never audited during the period at issue. OIP at 3. Although some investors received financial information regarding Ditto Trade, no investor received the audited financial statements and other information required under Rule 506 relating to Ditto Holdings. *Id.* & n.3.

In order to reach more potential investors, Ditto Holdings entered into a series of agreements with Marc Mandel pursuant to which Mandel provided marketing advice and other services to Ditto Holdings. *Id.*

Respondent Fox:

This is factually inaccurate. The OIP does not state, that Ditto Holdings entered into any agreements with Marc Mandel "*In order to reach more potential investors.*" The OIP actually states:

"Beginning in August 2012, Ditto Holdings entered into a series of agreements with Marc Mandel ("Mandel"). Under the agreements, Mandel agreed to co-develop with Ditto Holdings an internet-based radio show covering the stock markets and provided a number of services to Ditto Holdings, including, among other things, advice on marketing, product offerings, industry trends, and investor offerings."

The SEC was aware that Ditto Holdings had an agreement with Marc Mandel (signed contemporaneously on August 20, 2012) to establish a Joint Venture (unrelated to Mandel's consulting efforts). They were also aware that it was more than four months after Ditto Holdings and Mandel began working together before the first investment was made by an individual referred by Mandel.

Initial Decision:

> Mandel hosted a radio program on which Ditto Trade advertised, and he distributed an investing newsletter introducing his roughly 350 subscribers to Ditto Holdings' securities offerings and to Ditto Trade's features and services. *Id.*

Respondent Fox:

This is factually inaccurate. The OIP does not state that Mandel "*distributed an investment newsletter introducing his roughly 350 subscribers to Ditto Holdings' securities offerings.*"

The OIP actually states:

"Mandel also hosted a radio program, on which Ditto Trade advertised, and distributed an investing newsletter. Mandel introduced his newsletter subscribers to Ditto Holding's securities offerings and also to Ditto Trade's features and services."

Initial Decision:

> Subscribers also received numerous emails from Mandel regarding Ditto Holdings, and Mandel hosted a series of online webinars and in-person meetings for investors with Fox. *Id.* More than seventy of Mandel's subscribers ultimately purchased securities from Ditto Holdings, amounting to $3.7 million of the $10 million total raised by Ditto Holdings. *Id.* at 2-3.

Respondent Fox:

While this is an accurate recitation of the OIP, it is important to note that the OIP does not state that the "*series of online webinars and in-person meetings for investors*" was to make a pitch to acquire stock. In fact, the in-person meetings in particular were for existing shareholders where I gave existing investors an update on the Company.

The majority of the seventy Mandel subscribers that ultimately invested in Ditto Holdings, were Ditto Trade customers BEFORE they became Ditto Holdings shareholders.

Initial Decision:

> Between April 2013 and July 2013, Fox sold some of his own Ditto Holdings shares to investors. *Id.* at 4. He did so with the help of Mandel, who again emailed his newsletter subscribers praising Ditto Holdings and telling them about the opportunity to buy shares of Ditto Holdings stock. *Id.*

Respondent Fox:

Judge Elliot appears to be under the belief that Mandel emailed ALL of his subscribers. The OIP actually states: "*Mandel began sending emails to some of his roughly 350 newsletter subscribers.*"

Initial Decision:

> When individuals expressed interest, Mandel gave them a copy of a stock purchase agreement provided to him by Fox, and told them to contact Fox if they needed more information. *Id.* Fox told Mandel that the stock purchase agreement was the only document interested purchasers would need to complete. *Id.*

Respondent Fox:

All decisions related to the sale of my personal shares, was done so with advice of counsel. In February 2013, I spoke to Stuart Cohn, the Company's General Counsel, about the possibility of selling some of his shares in Ditto Holdings. Mr. Cohn contacted outside counsel Jeffrey Patt at Katten Muchin Rosenman to inquire about what exemption, if any, was available for m . Mr. Cohn was told that an exemption from registration under Section 4(a)(2) of the Securities Act of 1933, as amended, known as "Section 4(1-½)" [2], would be available to m .

Mr. Cohn supplied m with the Stock Purchase Agreement. (See February 26, 2013 email, attached hereto as Exhibit 1.) Mr. Cohn failed to inform m the need for all purchasers to be accredited, and omitted in the Purchaser Representation section of the Stock Purchase Agreement that the purchaser was in fact accredited.

However, the Stock Purchase Agreements did contain the following significant Purchaser Representations:

> **Purchaser (A) has adequate means of providing for Purchaser's current financial needs and possible personal contingencies and has no need for liquidity in Purchaser's investment in the Shares, (B) can bear the economic risk of losing Purchaser's entire investment in the Shares, (C) has such knowledge and experience in financial matters that Purchaser is capable of evaluating the relative risks and merits of Purchaser's purchase of the Shares, (D) is familiar with the nature of, and risks attendant to, Purchaser's purchase of the Shares, and (E) has determined that the purchase of the Shares is consistent with Purchaser's financial objectives;**
>
> **Purchaser has obtained professional advice, including legal, accounting and tax advice, in connection with his purchase of the Shares, or has made an informed decision not to seek such advice;**
>
> **The Shares have not been registered under the Securities Act, or any state or foreign securities laws;**

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[2] On August 23, 2013, in an effort to confirm the exact exemption provided six months earlier, Mr. Cohn contacted outside counsel Jeffrey Patt. Mr. Patt emailed back the details with the note: "*Stu, you might have thought I was being facetious, but in fact, this is from a book I published about 2 years ago on Stockholders Agreements,*" (See August 23, 2013 email, attached hereto as Exhibit 10.)

the Shares must be held indefinitely and Purchaser must continue to bear the economic risk of the investment in the Shares unless and until the offer and sale of such Shares are subsequently registered under the Securities Act and all applicable state securities laws or an exemption from such registration is available to the Purchaser with respect to the Shares;

there is no established market for the Shares and it is not anticipated that there will be any public market for the Shares in the foreseeable future;

the Company is under no obligation to register the Shares under the Securities Act on behalf of Purchaser, to assist Purchaser in complying with any exemption from registration or to consent to the transfer of the Shares;

Purchaser has carefully reviewed, is familiar with and understands any and all documents and information requested by Purchaser or otherwise supplied by the Company in connection with the purchase and sale of the Shares;

All documents, records and information pertaining to a purchase of the Shares which have been requested by Purchaser have been made available or delivered to Purchaser;

Purchaser is fully familiar with the business and operations of the Company, and has had an opportunity to ask all his or her questions of, and in each instance receive satisfactory answers from, the Company concerning the terms and conditions of Purchaser's investment and the financial condition and planned business and operations of the Company;

The Company has a limited operating history and limited assets, and is a high-risk venture. The Company's actual results may vary from projected results and the variations may be significant;

There can be no assurance the Company will be successful in raising additional capital if needed or that the terms upon which such financing is available will be acceptable to the Company;

No documents or oral statements given or made by Seller, the Company or any of the Company's affiliates are contrary to the information and acknowledgements contained in this Agreement;

The information provided to Purchaser is sufficient to allow Purchaser to make a knowledgeable and informed decision regarding his or her investment in the Shares;

Purchaser may not be able to sell or dispose of the Shares even in the event of a personal emergency. Purchaser's overall commitment to investments which are not readily marketable (including Purchaser's investment in the Shares) is not disproportionate to Purchaser's net worth;

Seller has not guaranteed, represented or warranted to Purchaser either that (A) the Company will be profitable or that Purchaser will realize profits as a result of his or her investment in the Shares, or (B) the past performance or experience on the part of any officer, director, stockholder, employee, agent, representative or affiliate thereof, or any

employee, agent, representative or affiliate of the Company will in any way indicate the predictable results of ownership of the Shares; and

Purchaser understands that: (i) an investment in the Shares involves certain risks; (ii) no federal or state agency has made any finding or determination as to the fairness of the investment or any recommendation or endorsement of the Shares; and (iii) there currently are restrictions upon the transferability of the Shares and no public market for the Shares is expected to develop; and, accordingly, Purchaser may not be able to dispose of the Shares when desired (even in the event of an emergency).

(See Stock Purchase Agreement, attached hereto as Exhibit 2.)

The advice of counsel was further evidenced by a September 4, 2013 email sent by [redacted] Jeremy Mann to [redacted] Paul Simons. In the email, Mann sent Simons 14 confidential executed Stock Purchase Agreements (for the purchase of my personal shares). These 14 agreements included that of the only two non-accredited investors. Mann commented that: "*I asked [General Counsel Stu Cohn] about these agreement. He said that they are solid and the buyer has enough knowledge.*"

(See September 4, 2013 email, attached hereto as Exhibit 3.)

Initial Decision:

> Neither Fox nor anyone acting on his behalf took any steps to determine whether the purchasers were sophisticated investors, despite the fact that at least two had previously identified themselves to Ditto Holdings as non-accredited investors. *Id.*

Respondent Fox:

The OIP is factually inaccurate. Only one of the two non-accredited purchasers was an existing Ditto Holdings shareholder, and therefor would have declared their non-accredited status on their Subscription Agreement with the Company. The other non-accredited investor didn't purchase directly from the Company till several months later, thereby declaring their non-accredited status.

However, while the OIP states that "*at least two had previously identified themselves to Ditto Holdings as non-accredited investors*", it does not state that I was aware at the time of the two transactions (to purchase his shares) that they were non-accredited.

Initial Decision:

> Twenty-eight of Mandel's subscribers purchased a total of $1.25 million of Fox's common stock, but none of the investors had access to financial statements or other required information about Ditto Holdings. *Id.*

Respondent Fox:

I initially intended to sell only 300,000 of the 5,728,636 shares I owned in Ditto Holdings (representing approximately 5%-6% of his ownership) to one or two purchasers.

This was evidenced by a February 26, 2013 email from my to Marc Mandel, and several emails that I sent to potential buyers of his shares in April 2013.

(See February 26, 2013 email, attached hereto as Exhibit 4; see also April 9, 2013 email, attached hereto as Exhibit 5; see also April 12, 2013 email, attached hereto as Exhibit 6.)

In these emails, I also explained that "*While this is a better price [$1.10] than the last round [$1.25], it is important to understand that the Company will not be receiving any of the proceeds.*" In other words, the price was slightly less because the monies would not be growth capital for the Company.

I first sold his shares in April 2013, after the closing of the Company's $1.25 round on March 25, 2013.

Because there was no active financing round occurring (the Company's $1.50 round began on July 10, 2013), there was a high level of interest in purchasing my shares.

Ultimately, I negotiated 28 separate purchases at three different prices ($1.10, $1.00 and $0.90).

Initial Decision:

> No registration statements were filed in connection with any of Ditto Holdings' securities, and exemptions from registration were not available for all of the transactions described above. *Id.* at 4. As a result, the OIP found that Fox willfully violated Section 5(a) and of the Securities Act, which prohibit the direct or indirect offer and sale of securities through the mails or interstate commerce unless a registration statement has been filed or is in effect or an exemption from registration is available. *Id.* at 5; *see* 15 U.S.C. § 77e(a), (c).

Respondent Fox:

Based on in-house General Counsel and Jeffrey Patt of Katten Muchin Rosenman, I believed these resale transactions were effected in a manner consistent with the so-called "Section 4(1-1/2)" resale procedures that are commonly relied upon in negotiated resales of restricted securities by affiliates of privately-held companies. I believe these resale transactions were not the result of a general solicitation by m , the Company or any representative or affiliate of either of them. Each was a negotiated transaction with a purchaser.

Furthermore, in each case, I obtained representations from the purchaser that it: (i) acquired the shares for investment purposes and not for distribution, (ii) can bear the economic risk of losing the entire investment, (iii) understood the securities were restricted securities, and (iv) had the means to hold the investment for an indefinite period of time, and by ensuring that the secondary sale was not the result of a general solicitation by the seller.

Initial Decision:

> The Division seeks to bar Fox from the securities industry[3] pursuant to Exchange Act Section 15(b)(6), with the right to apply for reentry after five years. Div. Mot. at 4, 12. Section 15(b)(6) authorizes the Commission to censure, limit the activities of,

suspend, or bar Fox from the industry if the following criteria are met: (1) at the time of the alleged misconduct, Fox was associated or seeking to become associated with a broker or dealer; (2) Fox has willfully violated any provision of the Securities Act or its rules or regulations; and (3) the sanction imposed is in the public interest. 15 U.S.C. §78*o*(b)(4)(D), (6)(A)(i). The first requirement is met because during the majority of the time he engaged in his misconduct, Fox was the CEO and a registered representative of Ditto Trade, a registered broker-dealer. OIP at 2. Because Fox consented to an order finding that he willfully violated Section 5(a) and (c) of the Securities Act, the second requirement is also met. *Id.* at 1, 5. Accordingly, I will impose a sanction if it is in the public interest.

A. The Public Interest Factors

The criteria to determine whether a sanction is in the public interest are the *Steadman* factors: (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations. *Steadman*, 603 F.2d at 1140; *see Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *See Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006); *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). The Commission's inquiry into the appropriate sanction to protect the public interest is flexible, and no one factor is dispositive. *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22. In deciding whether the public interest warrants an industry bar, I must determine that "such a remedy is necessary or appropriate to protect investors and markets." *Ross Mandell*, Exchange Act Release No. 71668, 2014 WL 907416, at *2 (Mar. 7, 2014).

Fox's conduct was egregious. "The registration requirements [of Securities Act Section 5] are the heart of the securities regulatory system." *Charles F. Kirby*, 56 S.E.C. 44, 49 (2003). Fox circumvented these critical requirements by selling unregistered securities to dozens of non- accredited investors without providing them required financial information on Ditto Holdings. OIP at 2-4. As a result, both investors and the marketplace were harmed by being deprived of information necessary to make fully informed investment decisions. *See Gordon Brent Pierce*, Securities Act Release No. 9555, 2014 SEC LEXIS 839, at *84 (Mar. 7, 2014). It also appears that Ditto Holdings' investors suffered financial losses. Though Fox claims that "[n]o shareholders were harmed, intentionally or otherwise," he has also represented that "our shareholders, and myself, my family, and my mother, we lost our entire investment." Resp. Opp. at 11; Prehearing Tr. 17.

Respondent Fox:

As Judge Elliot states below, "*There is no evidence that Fox intentionally violated Section 5, and Fox vigorously disputes that he did so.*"

When I claimed in my Response Brief to Division's Motion for Summary Disposition that, "*no shareholders were harmed, intentionally or otherwise*", I was referring to actions caused by my . The fact of the matter is that the sole reason for the failure of Ditto Holdings was the malicious efforts of several false "whistle blowers".

Initial Decision:

> I reject Fox's suggestion that his violations were not egregious because Ditto Trade, alleged to be Ditto Holdings' sole operating subsidiary, had its financial statements audited annually. Resp. Opp. at 11.

Respondent Fox:

The OIP does not state that Ditto Trade was "*alleged to be Ditto Holdings' sole operating subsidiary.*"

The OIP is clear that Ditto Trade WAS Ditto Holdings' sole operating subsidiary, when it states:

"Ditto Trade, Ditto Holdings' sole operating subsidiary, has had its financial statements audited annually since 2010."

Initial Decision:

> Investors purchased shares of Ditto Holdings, not of Ditto Trade. The fact that some investors received information about Ditto Trade's finances does not cure the harm inflicted by Fox's failure to properly disclose Ditto Holdings' financial information.

Respondent Fox:

I was not trying to use this fact to excuse the violation. It should, however, speak to the lack of egregiousness of the violation. While technically the corporate entity selling shares was Ditto Holdings, as the sole operating subsidiary and the only source of revenue, it was Ditto Trade's results that investors were most interested in.

Initial Decision:

> *See* OIP at 3 n.3. Fox also fails to explain why his unsupported allegation that "[m]ost of the investors in [Ditto Holdings] were unsolicited" mitigates the egregiousness of his actions. Resp. Opp. at 11.

Respondent Fox:

The mitigation of the "*egregiousness of his actions*" is not in a vacuum. One has to include the following facts:

1) **"*There is no evidence that Fox intentionally violated Section 5*" (as stated below by Judge Elliot),**

The sole operating subsidiary and only source of revenue was audited annually,

the majority of the violations occurred during a short 10-month period,

I did not actively "solicit" non-accredited investors should speak to the lack of egregiousness of the violation.

Initial Decision:

> Finally, Section 5 violations are not merely "technical" in nature, as Fox contends. Div. Mot. Ex. A at 2; Resp. Opp. at 5; *mPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *24 n.41 (Feb. 2, 2015) ("The importance of [Section 5's registration] provisions undermines [Respondent]'s attempt to characterize [its] violations as merely 'technical' in nature." (citing *Owen V. Kane*, 48 S.E.C. 617, 623 (1986))).

Respondent Fox:

The facts in the mPhase Techs., Inc. case cited above are considerably different th m (or Ditto Holdings for that matter).

mPhase Technologies, Inc., was a "penny stock" that was formerly quoted on the OTC Bulletin Board ("OTCBB"). They were appealing FINRA's denial of their request that FINRA process and announce mPhase's reverse stock split on the OTCBB.

Ditto Holdings was never a "penny stock" traded on the OTCBB or anywhere else[3]. mPhase, in what would be a publicly available document, used the word "technical" in their description of the 2007 Order that was concerning to FINRA. However, as you will see below, mPhase qualified the word "technical", and thereby minimized the importance of the violations:

"mPhase described the 2007 Settlement Order as involving only "technical violations" of the securities laws, not antifraud violations..."

It is also important to understand that mPhase's violations, as stated in the "2007 Settlement Order", were significantly greater than those alleged in my OIP[4]:

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[3] During the preconference hearing on March 21, 2016, it became apparent that the Division was trying to put me and Ditto Holdings in a negative light when I had to clarify for a surprised Judge Elliot that Ditto Holdings was in fact NOT a penny stock trading on an exchange such as the OTCBB.

Judge Elliot: Okay. What was -- did it ever trade at below $5 a trade?

MR. FOX: Your Honor, it was never public. It was only a private company.

Judge Elliot: "I confess; I'm now completely mystified. Let me turn to the Division. Can you shed some light on this? Is it your position that Ditto Holdings was a penny stock?"

[4] The mention of the significant distinction between my alleged violations, and that of mPhase, is in no way an effort by me to minimize the importance of the Securities laws that the SEC alleged that I violated.

"The 2007 Settlement Order found that, in the course of this acquisition, (1) Durando, Dotoli, PacketPort.com, and Microphase offered or sold [its "Penny Stock"] shares of PacketPort.com stock without a registration statement in effect in violation of Sections 5(a) and (c) of the Securities Act of 1933; (2) Durando and Dotoli violated Exchange Act Section 16(a) and Rule 16a-3 by failing to timely file Forms 3 to reflect their beneficial ownership of more than ten percent of PacketPort.com's stock; and (3) Durando violated Exchange Act Section 13(d) and Rule 13d-1 by failing to timely file a Schedule 13D after acquiring more than five percent of PacketPort.com's stock."

With all that said, the OIP was factually inaccurate when it stated that I and Company issued a public press release stating that "*their settlements with the Commission involved only 'inadvertent technical rules violations'*."

The public press release dated September 11, 2015, that was included as an exhibit in the Divisions Motion for Summary Disposition, DID NOT use the term "*technical*". Here is what it stated:

"Two years ago, our young Company came under attack by a former employee on the verge of termination," exclaimed Joseph Fox, CEO of SoVesTech, Inc. "This individual tried to use the federal government to damage the Company and to impugn my reputation. The Company's settlement, as well as my own, involved inadvertent rules issues that had nothing to do with any of the former employee's false claims."

The Company, without admitting or denying any allegations, agreed to a settlement in which the SEC states that the Company did not provide sufficient financial disclosure in a private offering that was extended primarily to accredited investors, but which included some non-accredited investors whose participation triggered a heightened disclosure standard. The Company agreed that it would no longer accept investments from non-accredited investors without providing all required disclosures, and it agrees to pay a fine of three payments of $16,666 each."

The only use of the word "technical", was in a confidential non-public email to existing shareholders. In an effort to NOT minimize the seriousness of the alleged violations, the email went on to explain what caused the alleged violations, the remedial actions being taken and the size of the monetary sanctions. Here is what it stated:

"After a very thorough investigation of Simons' disingenuous claims of fraud and dishonesty against me and the Company, the SEC chose to not pursue any of Simons' claims...

After 18 months of investigation, the SEC backed into what we consider inadvertent technical rules violations that were NEVER raised by Simons at any time.

The settlement states that the Company and I did not provide sufficient financial disclosures in certain private offerings that were extended primarily to accredited investors, but which ultimately included some non-accredited investors. Participation by non-accredited investors triggered a heightened disclosure standard."

"The Company and I both agreed that we would no longer accept investments from non-accredited investors without providing all required disclosures. The Company agreed to pay a

fine of $50,000 consisting of three payments of $16,666 each over the next 4 months. I personally agreed to pay a fine of $205,000."

Initial Decision:

> Fox's violations were recurrent, involving at least three different offerings and the sale of Fox's own stock, over the course of almost four and a half years. OIP at 2-4. They concluded fewer than three years ago; although not especially recent, they also were not especially remote. *Id.* at 2.

Respondent Fox:

It is important to note that 90% of the total non-accredited investors (representing more than 95% of the money invested by non-accredited investors), made their purchases during a 10-month period from December 2012 through September 2013.

The other 4 non-accredited investors (who purchased a total of $69,500 out of $1,327,995 of stock), made their purchases during a 12-month period from March 2010 through March 2011.

Initial Decision:

> The evidence is mixed regarding the sincerity of Fox's assurances against future violations and his recognition of the wrongful nature of his conduct. Fox asserts that Ditto Holdings was audited after he learned of the financial disclosure requirements, and he claims to have directed a "self-imposed freeze on new capital raising until the audit of the holding company could be completed." Resp. Opp. at 12. This suggests that Fox recognized his misconduct and attempted to avoid it in the future. His settlement with the Commission, though done on a neither-admit-nor-deny basis, also suggests a recognition of his misconduct.

Respondent Fox:

It is factually inaccurate to say that "*The evidence is mixed regarding the sincerity of Fox's assurances against future violations and his recognition of the wrongful nature of his conduct.*" Once I became aware of the issues, I quickly assumed responsibility and made assurances that I would never violate any securities laws.

In addition to the numerous phone calls and in-person off the record conversations with the Division of Enforcement, where I continually accepted responsibility for any of the violations alleged by the Division, I made the following on the record statements:

In his December 10, 2014 deposition, I stated the following:

SEC Attorney:	**Okay. Did you determine whether each of those purchasers was accredited or non-accredited?**
MR. Fox:	**I believe they all were accredited and I was wrong. There were two non-accredited's.**

SEC Attorney: What was your belief based on?

MR. Fox: A lot of them were existing shareholders so I knew from their status. But, there was a couple of new ones that I was not as familiar with, unfortunately, and I, I thought I had it on here where we, where it specifically said that I am an accredited investor and whatever, and I, unfortunately, I missed that. That was my, my [only] mistake only.

(See pages 189 (lines 13-24) of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 7.)

SEC Attorney: Did each of the investors, did they inform you in connection with their purchases of your personal sales whether they were accredited or non-accredited?

MR. Fox: No. I believe that they, because there is, most of them of are existing shareholders I believe that they were already, I knew them, them to be non-accredited. I mean, sorry, to be accredited, excuse me. But, I missed it. There was two that weren't accredited. I do take responsibility for that.

(See pages 189 (ln. 25) 190 1-8 of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 7.)

SEC Attorney: How did you comply with that exemption?

MR. Fox: ...I believe they were all accredited and I, I made a mistake on that. And I think the other reps and warranties or all the different disclosures are there. I believe, absolutely, I, I believe a 100 percent that I complied based on what I believe the four one and-a-half to stand for.

(See page 191, lines 5-12 of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 7.)

MR. Fox: I'm not saying we're perfect and I take responsibility of everything going on here. I did it, I did it, it's fine. Nothing purposely. I take responsibility.

(See page 208, lines 22-25 of the transcript from the December 10, 2014 deposition of Mr. Fox, attached hereto as Exhibit 7.)

MR. Fox: I have a well-documented career of always putting my customers and shareholders first...it's absolutely non-public assessment to suspend me for any period of time...any violations were 100 percent inadvertent and not done so recklessly...most importantly, I [did not] do anything with scienter.

(See pages 7 (lns. 21-25) 8 (lns. 1-2) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 8.)

MR. Fox: And they've never once ever acknowledged the fact that I have been a conscientious person in this industry for 20 years, not just as a broker, but the CEO of brokerage firms that have been innovative that could have easily had all kinds of complaints against them, and I have a spotless compliance record. I took the Company public, Your Honor. I went through the SEC process. I never had an issue. I never had concerns, and I never for one second did anything with intent or scienter. I took responsibility. Ms. McKinley and Mr. Forkner made it clear or believe that I did not, even though from day one, as testimony will show, I did make it clear that I took responsibility, if I was using the wrong exemption or the wrong definition within the exemption 504 and 506. As I showed, Your Honor, there is no information within the study material or the test that breaks down the actual disclosure requirement. So, Your Honor, clearly there is no additional information of any substance, if at all. You already made it clear, Your Honor, regarding the Steadman case, that scienter is a big factor, and there is no scienter, Your Honor.

(See pages 12 (lns. 5-25) 13 (lns. 1-5) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 8.)

MR. Fox: There was never a scienter. There was never an intent. I've been nothing but conscientious for 20 plus years. I have been labeled falsely on several different fronts. I've taken so much abuse from this whole process. Your Honor has been unbelievably fair in its assessment [as detailed in the March 16, 2016 decision], and I truly believe that, look, I'm not looking to be in the brokerage business, Your Honor. [However] I will not allow, without a fight, to lose or to be considered someone who should have been barred or banned. And the fact that they were looking for one year, when I asked for the bifurcation, they were looking for one year that I could not accept, and then to go to five years and whatnot, to find various excuses which weren't true to try to be a penny stock guy, even to get that one year. I mean, this has been an unbelievable circumstance, Your Honor. I've done -- look, I take responsibility for what occurred. I had the SEC review my documents, the same documents, and the same exact circumstances in 1999, and nothing told me otherwise that I was working off the wrong exemption. I have always looked out for my shareholders. It's well documented. It's on the SEC's website. I can point to three or four different circumstances..."

(See pages 18 (lns. 1-25) 19 (lns. 1-3) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 8.)

During the March 21, 2016 preconference hearing, in regard to the two non-accredited investors who purchased my shares, I once again made it clear that I took responsibility. Here is his testimony:

> **MR. Fox:** **I [still] took responsibility for that, Your Honor. I offered to pay back the two people for 42 or $47,000. I offered [the Division to repurchase these shares from] these individuals. They [the Division] said, "No, it was not going to be part of the settlement." I was willing to repurchase when I had the money, and that was not part of it.**

(See pages 25 (ln. 25) 26 (lns. 1-5) of the transcript from the March 21, 2016 preconference hearing, attached hereto as Exhibit 8.)

Initial Decision:

> On the other hand, in an email sent to Ditto Holdings investors shortly after the issuance of the OIP, Fox described himself as being "vindicated," and characterized his settlement with the Commission as the "SEC back[ing] into what we consider inadvertent technical rules violations." Div. Mot. Ex. A at 1-2. He also noted that the "[OIP] is clear that we are not admitting or denying the findings in the order" and indicated that he only settled with the Commission so as "to not drag out [his] negotiations for the betterment of [Ditto Holdings]." *Id.* at 2. Fox insists that his use of the word "technical" was not intended to minimize the severity of his violations. Resp. Opp. at 5-6. But when read as a whole, the email is an obvious attempt to downplay and excuse his misconduct – Fox even asks the recipients to consider additional investments in Ditto Holdings now that "the SEC issue [is] behind us." Div. Mot. Ex. A at 2-3. This calls into question the degree to which he acknowledges his misconduct and the sincerity of his assurances against future wrongdoing.

Respondent Fox:

I was not saying that I was vindicated from the SEC's investigation, or that the SEC itself vindicated m . y reference to vindication is unambiguous, when I stated the following, "*After a very thorough investigation*[5] *of Simons' disingenuous claims of fraud and dishonesty against me and the Company, the SEC chose to not pursue any of Simons' claims.*"

There is no getting around the fact that I was in fact vindicated of the lies told by Paul Simons. Paul Simons found out he was being fired from the Company and decided to make knowingly false claims to two separate governmental agencies. (See "Joe is firing you Tuesday." Email, attached hereto as exhibit 9.)

After the three thorough and overlapping investigations (conducted by the SEC, FINRA and independent lawyers) could not confirm a single one of Paul Simons' criminal allegations, I earned the right to call my vindicated.

---

[5] I did not disparage the SEC's investigation, or the outcome of its investigation. Nor did I claim that the SEC were at all responsible for Paul Simons' "*disingenuous claims of fraud and dishonesty.*"

There is no getting around the fact that Simons' list of my purported wrongs DID NOT include any reference to the Section 5 violations alleged by the Division. The Division, during the course of investigating Paul Simons lies, discovered what they believed to be an unintentional[6] violation of Section 5(a) and 5(c). Since this was not one of the false claims made by Paul Simons, most laypersons would consider this to be "backed into".

The fact that I inform the Ditto Holdings shareholders that I chose "*to not drag out [his] negotiations for the betterment of [Ditto Holdings]*", is in no way an "*attempt to downplay and excuse his misconduct.*" The facts are unambiguous. The Division made it clear that they would not process the Company's agreed upon settlement, until I agreed to my own settlement. The Company signed settlement m y

On February 3, 2015, Jedediah B. Forkner, Senior Attorney for the Division of Enforcement, sent the following email to Ditto Holdings General Counsel Stuart Cohn:

> "*Mr. Cohn:*
> *We received your latest suggested edits and have made changes to the attached drafts of the Offer and Order. We trust that with these edits we now have reached an agreement that Ditto is willing to sign so that we can submit it to the Commission for approval.*
> *We will send you a draft of any release before it is made public, but no release will be drafted unless and until a signed agreement is approved by the Commission. The release would be based on the facts recited in the Order. If you would like to review sample releases, you can find them on our public website (sec.gov).*
> *Thanks,*
> *Jed*"

Mr. Cohn responded on February 9, 2015 with the following email:

> "*Mr. Forkner-- As indicated, at my request, by [Ditto Holdings outside counsel], the company is prepared to submit the signed Offer. Because the Offer requires notarization, I will take care of that and send you the signed, notarized Offer Tuesday.*
> *We appreciate the SEC's concluding a company settlement independent of Mr. Fox's matter, and, also of importance to the company, your facilitating a global settlement of the outstanding matters affecting both Mr. Fox and the [FINRA investigation with the] company.*
> *Sincerely,*
> *Stu Cohn*"

Mr. Forkner responded on February 10, 2015 with the following email:

> "*Thank you.*
> *Jedediah B. Forkner*"

On February 10, 2015, Mr. Cohn sent Mr. Forkner its signed and notarized settlement offer. Mr. Cohn, along with my believed that the Company's settlement was going through the Commission's review process.

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[6] Judge Elliot was quite clear in his April 25, 2016 Initial Decision when he stated, "*There is no evidence that Fox intentionally violated Section 5, and Fox vigorously disputes that he did so. See Resp. Opp. at 1, 12-13.*"

On March 18, 2015, more than 5 weeks after submitting the signed settlement agreement, outside counsel for Ditto Holdings spoke with Mr. Forkner and his supervisor Anne McKinley, and inquired as to the status of the Commissions' review. He reported back the following in an email:

> ***"They will not send any offer from Mandel, Ditto, and Fox to DC until they are all in one package. Will send it without your offer only if you take the position you are going to litigate with the Commission."***

I responded four minutes later:

> ***"Why did they mislead us on timing???"***

To which Ditto Holdings outside counsel replied:

> ***"BTW, Anne apologized, using that word."***

While it should be quite clear that I was indeed forced to expedite his settlement for the benefit of the Ditto Holdings shareholders, I always took responsibility for, and acknowledged, the alleged violations.

As stated above, the use of the word *"technical"* was in no way meant to minimize the importance of the securities laws. Since all of the alleged violations are believed by all to be an unintentional act, the use of the word *"technical"* is meant to clearly differentiate it from the intentional criminal acts falsely alleged by Paul Simons.

It is difficult to think that the Company, who had been near death for two years thanks to a false and malicious "whistle-blower", wouldn't begin to raise money to try and keep the Company alive now that the crushing SEC investigation is over. It is hard to imagine how *"this calls into question"* anything.

It is important to understand that prior to sending out the email in question, I received the approval of both Ditto Holdings inside counsel and outside counsel.

Initial Decision:

> Ditto Holdings and Ditto Trade are no longer operational. Ditto Trade, Inc. Broker Check report at 2; Prehearing Tr. 16-17, 32. Fox does not hold any active securities licenses, and he has no definite plans to participate in the securities industry in any capacity in the future. Resp. Opp. at 13; Resp. Supp. Reply at 2; Prehearing Tr. 20-23, 31-33. Accordingly, although his occupation presents opportunities for future violations, it is uncertain whether he will continue in that occupation, and this factor does not weigh heavily in favor of a severe sanction.

Respondent Fox:

This is a factual inaccuracy. I did not violate any securities laws in my capacity as broker and principal. The alleged violations of Section 5(a) and 5(c) were in my capacity as CEO of Ditto Holdings, Inc., a non-licensed company. Therefore, my capacity as the CEO of Ditto Holdings DOES NOT present *"opportunites for future violations."*

While Judge Elliott correctly states, "*this factor does not weigh heavily in favor of a severe sanction*", he chose to disregard this factor when he ruled in favor of the Division and imposes a very severe sanction against m .

Initial Decision:

B. Scienter

There is no evidence that Fox intentionally violated Section 5, and Fox vigorously disputes that he did so. *See* Resp. Opp. at 1, 12-13. The Division instead argues that "there is ample evidence to demonstrate that Fox acted *at least recklessly* in violating the securities registration provisions," pointing to two pieces of evidence – the fact that Fox was "an experienced securities professional" and, relatedly, the various FINRA licenses held by Fox at different times in his career. Div. Supp. Br. at 2-3 (emphasis added). "In light of his credentials and experience," the Division insists that "Fox must have known the basic requirements for complying with the securities registration provisions and foreseen the risk of violating those provisions by selling securities to non-accredited investors." *Id.* at 3.

The Division has demonstrated that Fox acted at least recklessly. "Securities professionals are required to be knowledgeable about, and to comply with, the regulatory requirements to which they are subject." *Abraham and Sons Capital, Inc.*, 55 S.E.C. 252, 268 (2001). Failure to meet this standard constitutes an "'extreme departure from the standards of ordinary care . . .' and establishes recklessness." *Id.* at 268-69 (alteration in original) (quoting *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992)). I am not persuaded by any of Fox's arguments on this point.

Fox argues that he confused Rule 504 of Regulation D, which does not require financial information to be disclosed to unaccredited investors, with Rule 506, which does contain such a requirement. Resp. Supp. Reply at 3; 17 C.F.R. §§ 230.502(b), .504(b), .506(b). He maintains that none of his FINRA license exams or study materials went into detail on the disclosure requirement differences between Rule 504 and Rule 506 offerings, and he claims that he provided similar financial disclosures in a previous securities offering without any complaint from the Commission. Resp. Opp. at 2, 6-7; Resp. Supp. Reply at 3. I agree that the Series 7 and 24 exam outlines highlighted by the Division do not establish that the financial disclosure requirements of Regulation D offerings were covered in detail by either exam. *See* Div. Supp. Br. at 2; Resp. Supp. Reply at 3. But that does not absolve Fox of responsibility for selling securities using an exemption to registration that he failed to adequately understand. His claim that he mistakenly applied Rule 504's disclosure requirements to his (attempted) Rule 506 offerings hurts rather than helps his case. Rule 504 is limited, as stated in the title of the rule, to "offerings and sales of securities not exceeding $1,000,000." 17 C.F.R. §230.504. Fox evidently ascertained that this exemption was not available for Ditto Holdings' stock offerings, each of which exceeded $1,000,000. OIP at 2-3. Yet Fox suggests that after correctly selecting Rule 506 as a potentially available exemption, he was unable to understand the differences between the two rules because Regulation D is difficult for "most, if not all laypersons" to understand. Resp. Supp. Reply at 3.

Respondent Fox:

This is factually inaccurate. I never said that "*Regulation D is difficult for "most, if not all laypersons" to understand.*" Here is what I actually said:

"While the description of Regulation D may be "plain language" to the Division, it certainly is not to most, if not all laypersons."

Initial Decision:

> Even if true, it was unreasonable for him to assume that Rules 504 and 506 – which, among other distinctions, are strikingly different in scope – would contain the same financial disclosure requirements.
>
> Fox has also failed to establish that he reasonably relied on prior dealings with the Commission when making the assumption that Rules 504 and 506 contained similar disclosure requirements. He describes a series of private offerings and sales and an initial public offering undertaken by him and his brother in the late 1990s, and asserts that the Commission did not have "any issues with our level of financial disclosures to non-accredited investors." Resp. Opp. at 7. Even if true, it was not reasonable to construe the Commission's silence or inaction as approval. *Cf. S.W. Hatfield, C.P.A.*, Exchange Act Release No. 69930, 2013 SEC LEXIS 1954, at *16-17 (July 3, 2013) ("[T]he supposed silence or inaction of Commission staff in its reviews of [previously filed] registration statements may not be construed as Commission approval of those companies' practices[.]").

Respondent Fox:

I never stated that I "*construe[d] the Commission's silence or inaction as approval,*" and that was not the purpose of my inclusion of the relevant factors from previous dealing with the SEC. However, it is very reasonable to believe that these facts would go to scienter and recklessness, as well as "*the assumption that Rules 504 and 506 contained similar disclosure requirements.*"

Initial Decision:

> Fox's claim that he relied on advice of outside counsel when selling his personal shares of Ditto Holdings stock does not alter my conclusion on scienter. Resp. Opp. at 11. While reliance on counsel is not a defense to a charge of violating Section 5, it "may be considered as a mitigating factor in determining what sanction is required in the public interest." *D.F. Bernheimer & Co., Inc.*, 41 S.E.C. 358, 364 n.7 (1963); *see Rodney R. Schoemann*, Securities Act Release No. 9076, 2009 SEC LEXIS 3939, at *45 (Oct. 23, 2009) (advice-of-counsel is not a defense to a Section 5 charge), *aff'd*, 398 F. App'x 603 (D.C. Cir. 2010). But Fox's reliance defense relates only to the sale of his personal stock and does nothing to lessen his recklessness with respect to Ditto Holdings' stock offerings; Ditto Holdings' purported inability to afford an outside securities attorney to advise on the offerings is no excuse. Resp. Opp. at 2, 10. Fox also undermines the defense by asserting that he "mistakenly believed that all of the individuals that purchased [his] shares were accredited," suggesting he also mistakenly failed to make a complete disclosure to his counsel regarding the facts surrounding the sale. Resp. Opp. at 12; *see Rodney R. Schoemann*, 2009 SEC

LEXIS 3939, at *46 (advice-of-counsel defense requires a "complete disclosure to counsel" of the intended conduct).

Respondent Fox:

This is a factual inaccuracy. It was my counsel that provided the Stock Purchase Agreement. It was my counsel that omitted the "accredited only" representation. All of this advice came after I gave complete disclosure to in-house and outside counsel.

Initial Decision:

C. A Bar is in the Public Interest

On the one hand, Fox has made some assurances against future violations, there is little concrete evidence of investor losses, his violations were not particularly recent, and Fox's professional future remains uncertain. On the other hand, he acted with some degree of scienter, his recognition of the wrongful nature of his misconduct is dubious, and his violations were egregious and recurrent. I find particularly significant Fox's admitted confusion regarding Rules 504 and 506, which suggests a lack of current competence and a substantial degree of risk to investors and securities markets posed by his continuance in the securities industry. *See Gregory Bartko*, Exchange Act Release No. 71666, 2014 SEC LEXIS 841, at *34 (Mar. 7, 2014). A five- year bar is appropriate in the public interest.

Respondent Fox:

For the Division to argue that "*In light of his credentials and experience,*" I acted at least recklessly is incredibly flawed. First, it seems to be lost on the Division that I DID NOT violate any securities laws in my capacity as CEO of Ditto Holdings, a non-licensed entity. I never sold a single share of my stock, or that of Ditto Holdings, in my capacity as broker or principal of FINRA member Ditto Trade, Inc.

In 20 years, I had never acted in any investment banking capacity that would have had m conduct a Rule 504 OR Rule 506 private offering utilize my brokers or principals license.

For the past 20 years, I has been the CEO of several self-directed discount stock brokerage firms. During that time, I ha maintained an absolute spotless compliance record. This includes not having a single customer complaint, even though I facilitated millions of trades for tens of thousands of investors.

In the clearest evidence that I did not act with scienter or recklessness, one only has to look at the regulatory body that governs all licensed stock brokers and brokerage firms.

FINRA had reviewed every one of Ditto Holdings private placements going back to before it became a licensed brokerage firm in July 2010. This also includes during its 2011, 2013 and 2014 cycle exams. It also includes the review of offering in 2012.

The review included any and all private placement memorandums, completed investor subscription agreements and Form D filings. Every private placement memorandum that FINRA reviewed was missing audited financials as required in Rule 505 and Rule 506.

In other words, FINRA was well aware beginning in 2010 and through 2014 that Ditto Holdings was relying on either Rule 505 or Rule 506.

FINRA was also well aware during 2010 through 2014 that Ditto Holdings had accepted non-accredited investors. This was through the review of both the investors Subscription Agreements (with the non-accredited option initialed), as well as FORM D filings showing the number of non-accredited investors.

So to be clear, FINRA, the agency that is statutorily required to supervise the proper compliance of the securities laws by stock brokers and brokerage firms, was well aware of the facts that became the alleged violations as determined by the SEC. Yet, FINRA never once questioned the missing disclosures. In fact, had a proven record of immediately complying with FINRA (and its examiners) when they brought up any issues of concern.

At all times relevant, the SEC had all of the FINRA information above in hand.

Conclusion

In light of all of the overwhelming evidence and clarification as it pertains to scienter, recklessness and the likelihood of future violations, I respectfully ask your Honor to make a final decision that a collateral bar of any length is not in the publics best interest and to DENY the Divisions Motion for Summary Disposition with Prejudice.

Dated: May, 5, 2016

Respectfully submitted,

Joseph J. Fox

EXHIBIT – 1

DITTO TRADE

Joe Fox <jfox@sovestech.com>

Stock Purchase Agreement

1 message

Stu Cohn [redacted] Tue, Feb 26, 2013 at 1:51 PM
To: jfox@dittoholdings.com

Please see attached.

Stock Purchase Agreement for Ditto Holdings Shares FINAL.doc
70K

EXHIBIT – 2

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement is entered into on _____, 2013 by and between Yosef (Joseph) Fox, having an address at 633 West Fifth Street, Los Angeles, CA (the "Seller"), and _____, having an address at _____ (the "Purchaser").

WITNESSETH:

WHEREAS, Seller desires to sell and Purchaser desires to purchase from Seller _____ shares of the common Stock in Ditto Holdings, Inc., a Delaware corporation (the "Company"), upon the terms and conditions hereinafter set forth; and

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained herein, Seller and Purchaser hereby agree as follows:

ARTICLE I – RECITALS

Each of the Recitals is incorporated herein as Article I.

ARTICLE II - AGREEMENT OF PURCHASE AND SALE

Sale of Shares. On the terms and subject to the conditions set forth in this Agreement, Purchaser agrees to purchase, and Seller agrees to sell, issue, convey and deliver to Purchaser, _____ shares of common Stock in the Company (the "Shares") at a per share purchase price of $1.10, for an aggregate purchase price of $_____ ("Purchase Price"), paid in accordance with Article III hereof.

ARTICLE III - PURCHASE PRICE AND CLOSING

3.01 Purchase Price. In consideration for the sale and transfer of Seller's Shares to Purchaser, Purchaser agrees to pay and deliver to Seller the Purchase Price on the Closing Date, as defined in Section 3.02 below.

3.02 Closing. The closing of the transactions contemplated hereby (the "Closing") will take place at the offices of the Company on _____, 2013 (the "Closing Date") unless another place or date is agreed to in writing by the parties. At the Closing, the parties shall make the deliveries described in Section 3.03 hereof.

3.03 Closing Date Deliveries.

(a) On the Closing Date, Seller shall cause to be delivered to Purchaser a stock certificate representing Seller's Shares being transferred to Purchaser pursuant to this Agreement.

(b) On the Closing Date, Purchaser shall deliver to Seller a bank cashier's check or wire transfer in the amount of the Purchase Price.

ARTICLE IV - REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser that as of the Closing Date:

4.01 Authority. Seller has all requisite legal capacity necessary in order to execute and deliver this Agreement, and to consummate the transactions contemplated hereby.

4.02 Duly Executed. This Agreement has been duly executed and delivered on behalf of Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms. No further action is necessary by the Seller to make this Agreement valid and binding on Seller and enforceable against him in accordance with the terms hereof, or to carry out the actions contemplated by this Agreement.

4.03 Ownership of Seller's Stock. Seller is the sole owner of the Shares free and clear of any and all encumbrances. There are no existing warrants, options, stock purchase agreements, restrictions of any nature, calls or rights to subscribe of any character or kind relating to any of the Shares.

4.04. Non-contravention. The execution, delivery and performance of this Agreement by Seller of the transactions contemplated in this Agreement, do not and will not (a) violate or conflict with any contract or other obligation by which Seller is bound or which applies to the Shares, or require a consent, approval or waiver by any party, or (b) violate any law, statute, rule, regulation, ordinance, requirement, administrative ruling, order, judgment, injunction, award, decree or process of any governmental entity by which or to which Seller or any of the Shares are bound or to which they are subject.

ARTICLE V – REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF PURCHASER

Purchaser represents and warrants to Seller that as of the Closing Date:

5.01 Authority. Purchaser has all requisite legal capacity necessary in order to execute and deliver this Agreement, and to consummate the transactions contemplated hereby.

5.02 Duly Executed. This Agreement has been duly executed and delivered on behalf of Purchaser and constitutes the legal, valid and binding obligation of Purchaser enforceable in accordance with its terms. No further action is necessary by the Purchaser to make this Agreement valid and binding on Purchaser and enforceable against Purchaser in accordance with the terms hereof, or to carry out the actions contemplated by this Agreement.

5.03 Non-contravention. The execution, delivery and performance of this Agreement by Purchaser of the transactions contemplated in this Agreement, do not and will not (a) violate or conflict with any contract or other obligation by which Purchaser is bound, or require a consent, approval or waiver by any party, or (b) violate any law, statute, rule, regulation, ordinance, requirement, administrative ruling, order, judgment, injunction, award, decree or process of any governmental entity by which or to which Purchaser is bound or to which Purchaser is subject.

5.04. Investment Intention; No Resales. Purchaser represents, warrants and agrees that: (i) Purchaser is acquiring the Shares for investment solely for Purchaser's own account and not with a view to, or for resale in connection with, the distribution or other disposition thereof; (ii) the Shares purchased pursuant hereto will be issued only in the name of the Purchaser; and (iii) all dispositions of Shares by Purchaser must comply with applicable law, including state and federal securities law.

5.05 Purchase Representations. Purchaser acknowledges that:

(a) The Shares have not been registered under the Securities Act, or any state or foreign securities laws;

(b) the Shares must be held indefinitely and Purchaser must continue to bear the economic risk of the investment in the Shares unless and until the offer and sale of such Shares are subsequently registered under the Securities Act and all applicable state securities laws or an exemption from such registration is available to the Purchaser with respect to the Shares;

(c) there is no established market for the Shares and it is not anticipated that there will be any public market for the Shares in the foreseeable future;

(d) the Company is under no obligation to register the Shares under the Securities Act on behalf of Purchaser, to assist Purchaser in complying with any exemption from registration or to consent to the transfer of the Shares;

(e) Rule 144 promulgated under the Securities Act is not presently available with respect to the sale of any securities of the Company, and the Company has made no covenant to take any action necessary to make such Rule available for a resale of the Shares;

(f) when and if the Shares may be disposed of without registration under the Securities Act in reliance on Rule 144, such disposition may be made only in limited amounts in accordance with the terms and conditions of such Rule;

(g) a restrictive legend shall be placed on the certificates representing the Shares; and

(h) a notation shall be made in the appropriate records of the Company including those of its transfer agent, if any, indicating that the Shares are subject to restrictions on transfer and appropriate stop-transfer instructions will be issued with respect to the Shares.

5.06 Additional Purchaser Representations. Purchaser represents, warrants and acknowledges to Seller that:

(a) Purchaser has carefully reviewed, is familiar with and understands any and all documents and information requested by Purchaser or otherwise supplied by the Company in connection with the purchase and sale of the Shares;

(b) All documents, records and information pertaining to a purchase of the Shares which have been requested by Purchaser have been made available or delivered to Purchaser;

(c) Purchaser is fully familiar with the business and operations of the Company, and has had an opportunity to ask all his or her questions of, and in each instance receive satisfactory answers from, the Company concerning the terms and conditions of Purchaser's investment and the financial condition and planned business and operations of the Company;

(d) The Company has a limited operating history and limited assets, and is a high-risk venture. The Company's actual results may vary from projected results and the variations may be significant;

(e) There can be no assurance the Company will be successful in raising additional capital if needed or that the terms upon which such financing is available will be acceptable to the Company;

(f) No documents or oral statements given or made by Seller, the Company or any of the Company's affiliates are contrary to the information and acknowledgements contained in this Agreement;

(g) The information provided to Purchaser is sufficient to allow Purchaser to make a knowledgeable and informed decision regarding his or her investment in the Shares;

(h) Purchaser has obtained professional advice, including legal, accounting and tax advice, in connection with his purchase of the Shares, or has made an informed decision not to seek such advice;

(i) Purchaser (A) has adequate means of providing for Purchaser's current financial needs and possible personal contingencies and has no need for liquidity in Purchaser's investment in the Shares, (B) can bear the economic risk of losing Purchaser's entire investment in the Shares, (C) has such knowledge and experience in financial matters that Purchaser is capable of evaluating the relative risks and merits of Purchaser's purchase of the Shares, (D) is familiar with the nature of, and risks attendant to, Purchaser's purchase of the Shares, and (E) has determined that the purchase of the Shares is consistent with Purchaser's financial objectives;

(j) Purchaser may not be able to sell or dispose of the Shares even in the event of a personal emergency. Purchaser's overall commitment to investments which are not readily marketable (including Purchaser's investment in the Shares) is not disproportionate to Purchaser's net worth;

(k) Seller has not guaranteed, represented or warranted to Purchaser either that (A) the Company will be profitable or that Purchaser will realize profits as a result of his or her investment in the Shares, or (B) the past performance or experience on the part of any officer, director, stockholder, employee, agent, representative or affiliate thereof, or any employee, agent, representative or affiliate of the Company will in any way indicate the predictable results of ownership of the Shares; and

(l) Purchaser understands that: (i) an investment in the Shares involves certain risks; (ii) no federal or state agency has made any finding or determination as to the fairness of the investment or any recommendation or endorsement of the Shares; and (iii) there currently are restrictions upon the transferability of the Shares and no public market for the Shares is expected to

develop; and, accordingly, Purchaser may not be able to dispose of the Shares when desired (even in the event of an emergency).

5.07 Lock-up. Purchaser agrees that if the Company makes an initial public offering of its shares (an "IPO"), Purchaser shall not sell or otherwise transfer in any manner (or offer or agree to sell or otherwise transfer in any manner), directly or indirectly, without the prior written permission of the lead underwriter for the IPO (or of the Company, if the IPO is not underwritten), any shares of Common Stock (or any interest therein) during the Lockup Period. For purposes of the preceding sentence, any agreement, commitment or arrangement whereby any of the economic value, benefits or attributes of any such shares are directly or indirectly transferred (including any call option or other derivative security related to such shares) shall be treated as a sale of such sales. As used herein, "Lockup Period" means the period of seven days prior to the effective date of the registration statement for such IPO and the period of 180 days (or such smaller or greater number of days requested by the lead underwriter) after such effective date. Prior to the IPO, if requested by the Company, Purchaser shall execute and deliver a customary form of "lockup" agreement restricting the transfer of shares of Common Stock during the Lockup Period, which lockup agreement shall be in form and substance satisfactory to the lead underwriter for the IPO (or of the Company, if the IPO is not underwritten) in its sole discretion. Purchaser agrees that if, prior to the IPO, Purchaser transfers any shares of Common Stock, Purchaser shall (i) cause the transferee to agree to be bound by this Section 5.07 pursuant to a written joinder signed by the transferee in form and substance satisfactory to the Company in its sole discretion, and (ii) deliver such signed joinder to the Company at or before the time of such transfer. Purchaser agrees that any transfer of shares in violation of the preceding sentence shall be null and void. The restrictions on transfer in this Section 5.07 are in addition to, and not in limitation of, any restriction on transfer in any other agreement or imposed by applicable law.

ARTICLE VI – INDEMNIFICATION

6.01 By Seller. Seller shall indemnify and hold Purchaser harmless from and against any and all claims, losses, damages, injuries, causes of action, demands, attorneys' fees and costs, expenses and liabilities arising from or in connection with any misrepresentations or other failures of Seller to comply with the terms of this Agreement.

6.02 By Purchaser. Purchaser shall indemnify and hold Seller harmless from and against any and all claims, losses, damages, injuries, causes of action, demands, attorneys' fees and costs, expenses and liabilities arising from or in connection with the operation of the Company at any time following the Closing Date or from or in connection with any misrepresentations or other failures of Purchaser to comply with the terms of this Agreement.

ARTICLE VII - MISCELLANEOUS

7.01 Modification; Waiver. This Agreement may be modified, amended or supplemented only by a written instrument signed by each of Seller and Purchaser. The failure of any party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

7.02 Entire Agreement. This Agreement, including any exhibits hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all

other prior understandings, contracts or agreements, representations or warranties, oral or written, between the parties with respect of the subject matter hereof.

7.03 Expenses. Whether or not the transaction contemplated herein shall be consummated, each party shall pay its own expenses incident to the preparation and performance of this Agreement.

7.04 Rights and Remedies. The rights and remedies granted under this Agreement shall not be exclusive rights and remedies, but shall be in addition to all other rights and remedies available at law or in equity. No party shall be deemed to have been the drafter of this Agreement for the purpose of invoking any rule of interpretation in favor of the "non-drafting party".

7.05 Further Actions. Each party shall execute and deliver such other certificates, agreements, conveyances, certificates of title and other documents and shall take such other actions as may reasonably be requested by the other in order to consummate or implement the transactions contemplated by this Agreement.

7.06 Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered, or three business days after having been mailed, certified mail, first-class postage paid, to the address set forth at the head of this Agreement or to such other address of which notice has been duly given.

7.07 Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, by any party hereto without the prior written consent of the other party, which consent may be withheld at the sole and unreviewable discretion of the party from whom such consent is sought. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Except as aforesaid, nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties hereto and their said successors and assigns, any rights, remedies or obligations under or by reason of this Agreement.

7.08 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any adverse manner to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

7.09 Governing Law; Submission to Jurisdiction; Selection of Forum. This Agreement shall be governed and controlled by the laws of the State of California as to interpretation, enforcement, validity, construction, effect and in all other respects without reference to principles of choice of law. The parties agree that any disputes arising out of or related to this Agreement shall be litigated in the Federal or state courts having a situs within Los Angeles County, California. The parties hereby consent and submit to the jurisdiction of any local, state or federal court located within said city and state. In the event of the commencement of such proceedings, the prevailing

party shall be entitled to recover from the non-prevailing party the reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with those proceedings.

7.10 Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Facsimile and digital signatures shall be deemed original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed as of the date first above written.

SELLER:

Yosef (Joseph) Fox

BUYER:

Name:

Wiring instructions

BMO Harris Bank
111 W Monroe St.
Chicago, IL 60603
ABA: 071000288
Acct: 3713286
Account Name: Apex Clearing Corporation
For Further Credit (FFC): Yosef Fox
Customer Acct #5DW05473

To complete the wire, you must add the FFC and Customer Account info.

EXHIBIT – 3

From: Jeremy Mann [redacted]
Sent: Wednesday, September 4, 2013 2:45 PM
To: [redacted]
Subject: FW: Sub Agreements
Attach: [redacted] Zurkan.pdf; [redacted] Fox.pdf; [redacted] Chan.pdf; [redacted] and [redacted] Wiebe.pdf; [redacted] and [redacted] Shah.pdf; [redacted] Ward.pdf; [redacted] and [redacted] Lloyd.pdf; [redacted] Zalk.pdf; [redacted] Bosward.pdf; [redacted] Sayer.pdf; [redacted] Bessette.pdf; [redacted] Frain.pdf; [redacted] Kay.pdf; [redacted] Israel.pdf

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I asked Stu about these agreement. He said that they are solid and the buyer has enough knowledge.

From: Gene Romero [mailto:gromero@dittoholdings.com]
Sent: Wednesday, September 04, 2013 9:42 AM
To: 'Jeremy Mann'
Subject: Sub Agreements

Regards,

Gene Romero
Finance Associate

DITTO
HOLDINGS, INC

200 W. Monroe St.
Suite #1430
Chicago, IL 60606
(312)263-5400 phone
(312)263-8333 fax

www.DittoTrade.com

EXHIBIT – 4

DITTO TRADE

Joe Fox <jfox@sovestech.com>

Agreement to purchase shares From Joseph Fox

1 message

Joseph Fox <jfox@dittoholdings.com> Tue, Feb 26, 2013 at 2:26 PM
To: wizard@winningonwallstreet.com

Marc,

I have attached the Stock Purchase Agreement for the purchase of some of my personal shares. As a reminder, I am only willing to sell a maximum of 6% of my family's holdings.

This is the only agreement that interested purchasers would have to complete. The wiring instructions is at the bottom of the last page. It is for my personal Ditto Trade account.

Once I receive the agreement and funds, I will send out the agreement executed by me and the new stock certificate.

Please let me know if there is any questions.

Regards,

Joe

Stock Purchase Agreement for Ditto Holdings Shares FINAL.doc
71K

EXHIBIT – 5

Joe Fox <jfox@sovestech.com>

RE: Ditto Trade

1 message

Joseph Fox <jfox@dittoholdings.com>
To: Mike [redacted]

Tue, Apr 9, 2013 at 10:02 PM

Mike,

Thank you for the email.

In regards to your inquiries:

1. I haven't started receiving the monthly Shareholder Update. Have you started sending these updates out yet? Is there any other type of documentation/update/announcements that I'm also missing? Maybe it's just that I'm not on the email list?

You are on the email list and you have not missed a Shareholder Update. We have been very busy the last 2 months and I plan on sending out an extensive update this weekend.

2. I know you planned to start running marketing advertisements in Q2. I saw a good article in Trader's Magazine. Have there been any other ads? Print or other media?

We have produced 3 very innovative TV commercials that will be completed this Thursday. These spots will begin airing nationally in the next few weeks on CNBC and several other cable networks. I hope to provide a sneak peak of these commercials to our shareholders on Friday. Our online marketing efforts should begin in the next 30-45 days. In regards to press coverage, we expect several more articles to be written in the next 30 days.

3. There's been a little speculation that there's a chance Ditto would sell to one of the big boys (E*TRADE, Scottrade, Ameritrade, etc.) if the opportunity worked out and not necessarily take it to IPO. If this were to happen, is the payout to the Series shareholders simply 8% cumulative based on the purchase date to the sale date? Or is there more to it? How does this differ from the current offering? I'm a little unclear, can you please explain? My business partner is interested in investing $50K with the new (no lock-up) offering and we're wondering how these offering work and how they differ. I understand my Series B are locked up for 6 months where I can't sell, but are there any other differences? B 8% Cumulative Convertible Preferred Stock

I can tell you that we are not having any conversations today about us selling. While we will always consider an

offer (that has significant upside for all of our shareholders), it is our intention to get Ditto to an IPO. Your Series B preferred shares work this way. At an IPO, all of our outstanding preferred shares will automatically convert to common stock. The conversion will be one share of common for each share of series B preferred, plus common stock equal to 8% of the original purchase price on an annual basis. If we were to sell the Company BEFORE going *public, series B preferred holders* would have two choices. One choice, receive the original purchase amount, plus 8% annual interest cumulative from the acquisition date. Second choice, will be to convert the shares (plus interest) to common stock and receive the per share sale price.

We closed the last funding round about a month ago (common stock @ $1.25 per share). The current offering is NOT for shares being sold by the Company. Marc asked me if I could sell some personal shares, and I agreed. These shares represent approximately 5% of my families ownership in Ditto. These shares of common stock are being sold @ $1.00 per share. While this is a better price than the last round, it is important to understand that the Company will not be receiving any of the proceeds. Also, there is definitely a lock-up for these shares like all of the shares held by every shareholder of Ditto. I believe Marc misunderstood this. Remember the lock-up is not under our control. This is determined by the Investment Bankers that would be leading an IPO. Usually, the lock-up is 6 months, but bankers can make exception. In fact, when we took Web Street (my last brokerage firm) public in 1999, the bankers allowed our outside shareholders to sell 25% of their shares immediately with no lock-up.

If your partner is interested in purchasing the $1.00 common shares, it is important to know that the offer (at $1.00) expires on Friday. I have attached the Stock Purchase Agreement to this email.

Please let me know if you have any other questions.

Regards,

Joseph J. Fox

Chief Executive Officer

DITTO
HOLDINGS, INC.

633 West Fifth Street

Suite #1180

Los Angeles, CA 90071

(213) 489-1601 phone

EXHIBIT – 6

Joseph Fox <jfox@dittoholdings.com> Fri, Apr 12, 2013 at 9:15 AM
To: [redacted]>

Karle,

Thank you for the email and sorry for any confusion.

The shares you purchased at $1.25 were purchased directly from the Company.

The shares being referred to here at $1.00 to $1.10 is for the purchase of a small amount of my personal shares (approximately 5% of my ownership in Ditto). Proceeds from the sale of these shares would not be going to the Company. That is the main reason for the price difference.

I hope this answers your questions.

Regards,

Joseph J. Fox
Chief Executive Officer

Ditto Holdings, Inc.
www.DittoTrade.com

EXHIBIT – 7

THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)

) File No. C-08037-A

DITTO HOLDINGS, INCORPORATED)

WITNESS: Yosef Y. Fox

PAGES: 1 through 219

PLACE: Securities and Exchange Commission
175 West Jackson Boulevard
Room 9154
Chicago, Illinois 60604

DATE: Wednesday, December 10, 2014

The above-entitled matter came on for hearing, pursuant to notice, at 9:57 a.m.

APPEARANCES:

On behalf of the Securities and Exchange Commission:
JEDEDIAH FORKNER, Senior Attorney
ALYSSA A. QUALLS, Senior Trial Counsel
ANNE McKINLEY, Assistant Regional Director
Securities and Exchange Commission
Division of Enforcement
175 West Jackson Boulevard
Suite 900
Chicago, Illinois 60604

On behalf of the Witness:
MARK A. STANG, ESQ.
Chuhak & Tecson
30 South Wacker Drive
Suite 2600
Chicago, Illinois 60606
(312) 855-5445

CONTENTS

CONTENTS (CONT.)

PROCEEDINGS

MR. FORKNER: We are on the record at 9:57 a.m. on December 10, 2014. Mr. Fox, would you please raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes, I do.

MR. FORKNER: Please state and spell your full name for the record, including your middle name.

THE WITNESS: Yosef Yehuda Fox, Y-o-s-e-f, Y-e-h-u-d-a, F-o-x.

Whereupon,

YOSEF Y. FOX

was called as a witness and, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. FORKNER:

Q Do you also go by Joseph?

A Joseph Fox, Joe Fox.

Q My name is Jedediah Forkner. I'm a senior attorney with the Division of Enforcement. With me is Anne McKinley, as Assistant Regional Director with the Division of Enforcement. The two of us are Officers of Commission for the purposes of this proceeding. Also with us is Alyssa Qualls, a trial counsel with the Division of Enforcement. Ms. Qualls is not listed in the

Q And what paperwork, if any, did you use in connection with your sales?

A I had a stock purchase agreement similar to, I believe, what the, what I've used, well maybe not, well maybe it is. I have to see it. Give me your copy of it. Yes, very consistent with this.

Q Mr. Fox, I'm handing you what's been marked as Exhibit No. 45.

(SEC Exhibit No. 45 was marked for identification.)

A Thank you.

Q Please take a minute to review it. For the record, Exhibit No. 45 begins on JJFOX040822. It ends on JJFOX040828.

A Okay.

Q Mr. Fox, are you familiar with Exhibit No. 45?

A Yes, I am.

Q Can you tell us what it is?

A A stock purchase agreement.

Q Is this one of the stock purchase agreements that you used in connection with your personal sales of Ditto Holdings stock?

A I do believe so.

Q Did you create this stock purchase agreement?

A This is a template, I believe that Stu used, Stu Cohn, the company's counsel. He provided it to me consistent with what my brother's used or we used for my brothers.

Q Did each of the individuals who purchased stock from you complete or fill out one of these stock purchase agreements?

A Yes, they did.

Q Was there any other paperwork that was provided to them or that they completed?

A No, there wasn't.

Q And who set the terms of each of these agreements?

A I did. They're all individually negotiated.

Q Does that mean that you'd negotiate them between, negotiations between yourself and the buyer?

A Yes, that sometimes they were 90 cents, sometimes a dollar, sometimes a $1.10. Depends how much they were buying, depends in they were an existing shareholder, hence, you know, depends on my mood. It was negotiations between the two of us.

Q Did you provide the buyers with any information about Ditto Holdings, the company?

A No. This was, I, I do believe this was the only document.

BY MS. McKINLEY:

Q Did you provide any information to the investors in addition to the documentation orally?

A Anything they asked me I would deliver to them, yeah. I mean, if they, I, I had many conversations so I would have explained the business model, what our strategy was, our objectives, and, and then there's conversation I remember having in one specific e-mail that, where he said, well, I'm, I'm curious. You're selling stock at $1.00, or maybe it was $1.10 and yet the company was selling stock for a $1.25, what's the difference. I said, well, the $1.25 goes to the company. The company's going to use that money to grow the company. Money you're buying my stock, the money's not going to go to the company. So, that's the benefit. That's why the dollar would be more expensive when the money was, was higher to go to the company because that was growth capital. This is not growth capital so you're, you're going to get a better deal knowing you're not, this is not growth capital. And I've explained that in the e-mail.

BY MR. FORKNER:

Q I think you answered this before, but how many buyers purchased from you? Was it 25 to 30?

A Yeah, 30, 35, yeah, something like that.

Q And how much money did you raise from the sales of your stock?

A A million, two hundred thousand and change.

Q And where was that money deposited?

A Most of it was Wells Fargo. Some of it was my money market account at Apex Clearing.

Q Did any of the funds go anywhere other than those two accounts?

A I don't believe so. Well, just to be clear, that, at Wells Fargo there's a couple of accounts. There's a savings and a checking and stuff like that. It's connected.

Q Okay. Did you determine whether each of those purchasers was accredited or non-accredited?

A I believe they all were accredited and I was wrong. There were two non-accredited's.

Q What was your belief based on?

A A lot of them were existing shareholders so I knew from their status. But, there was a couple of new ones that I was not as familiar with, unfortunately, and I, I thought I had it on here where we, where it specifically said that I am an accredited investor and whatever, and I, unfortunately, I missed that. That was my, my mistake only.

Q Did each of the investors, did they inform you

in connection with their purchases of your personal sales whether they were accredited or non-accredited?

A No. I believe that they, because there is, most of them of are existing shareholders I believe that they were already, I knew them, them to be non-accredited. I mean, sorry, to be accredited, excuse me. But, I missed it. There was two that weren't accredited. I do take responsibility for that.

Q Separate from any past sales, just in connection with your personal sales, did you have them identify themselves as accredited or non-accredited?

A No. I knew them.

Q Did you file a registration statement with the Securities and Exchange Commission in connection with your sales?

A No, I did not.

Q Did you file any other paperwork with the SEC?

A I don't believe I was required to.

Q Did you rely on any exemption for the registration requirements for your sales?

A Yes, I did.

Q What exception did you rely on?

A What's commonly known as four one and-a-half which my attorney wrote a book on it. But that's neither here nor there.

MR. STANG: Have you read it?

THE WITNESS: Part of it.

MR. STANG: All right.

BY MR. FORKNER:

Q How did you comply with that exemption?

A Well, I believe they're all non-accredited, I'm sorry. I believe they were all accredited and I, I made a mistake on that. And I think the other reps and warranties or all the different disclosures are there. I believe, absolutely, I, I believe a 100 percent that I complied based on what I believe the four one and-a-half to stand for.

Q Was your initial reliance on this exemption based on your understanding that they were all accredited?

A Yes.

Q Now that you're aware that there were non-accredited investors who purchased from you do you believe that that exemption still applies?

MR. STANG: Well, I'm going to object to the form of the question. I don't know if he said that they were non-accredited or if he said there were?

THE WITNESS: There were two non-accredited.

MR. STANG: Just a moment, Mr. Fox, I'm talking right now, okay.

THE WITNESS: Sorry.

MR. STANG: I'd ask you a question and ask you to rephrase and make it clearer --

MR. FORKNER: I can rephrase.

MR. STANG: Either refer to the two or say some, some were, but I thought that your question was now that you now they were all non-accredited, that they were unaccredited, wasn't clear what we were --

MR. FORKNER: I'll rephrase.

MR. STANG: Okay, thank you.

BY MR. FORKNER:

Q Now that you know there were two non-accredited investors or at least two non-accredited investors who purchased from you do you believe that the exemption, that you still meet the requirements of the exemption?

MR. STANG: Objection, calls for legal conclusion.

MS. McKINLEY: You can answer.

MR. STANG: If you're able to render a legal opinion.

THE WITNESS: I was once called a jailhouse lawyer. Stu called me that in 1995 when he first met him. I thought it was an insult in talking for six months anyways. Then I said, wait, maybe it was more of a compliment so I hired him.

MR. STANG: So we digress.

THE WITNESS: So we digress. I, I get one of those. I, I, yeah, absolutely, I believe I'm still, I have the proper exemption for every one but those two.

BY MR. FORKNER:

Q Did you ask Mr. Mandel to help find potential buyers for your shares?

A I really --

MR. STANG: Objection, asked and answered twice.

MS. McKINLEY: This is for his personal --

MR. STANG: You can answer it again.

MS. McKINLEY: This is for his personal shares. We're not talking about the Ditto Holdings shares anymore.

MR. STANG: You might be right. Then I withdraw the objection. Sorry, I misunderstood.

THE WITNESS: I really don't remember the exact conversation that we had about that.

BY MR. FORKNER:

Q Do you recall having a conversation?

A I remember we talked about it and I think he, he thought that there were investors that would like to buy stock at the time when we were in-between, I believe we, we were in-between rounds and, and wanted to know if

absurd. I really think we should consider selling it. It might be a great opportunity and if our shareholders have already made money, why, privately.

He said no, let's not. We're building ourselves a clearing firm. Let's wait until the self clearing firm is done then we should sell. We went back and forth for a couple days. He talked me out of it. We waited.

By the time our lot had expired in March of 2000, March of 2000 our stock was at $3.75. By the time we sold stock, sorry, we never sold shares, until we sold the whole company we never sold shares, our stock was at 45 cents. So, we sold the company to E*Trade for their stock at a $1.87.

I've had a hard time over the years with that issue because I knew it, I felt it, and there had been buyers, 15 bucks, 18 bucks a share. 70, $80 million my brother and I.

By the time we sold the company in May of '01, we got a million shares of E*Trade a piece. The stock was $9.10. The stock went up to $10.10 that day. People loved it. They did this huge convertible debt deal that night without letting us know, the stock tanks. A few months later 9/11 happens.

By the time my brother and I sold stock it was,

we got five and-a-half bucks, $5.50 a share or $5.5 million, less taxes and everything else. It's not $100 million by any stretch of the imagination. And we owed money to J.P. Morgan and whatever. We could have got a hell of a lot more. My kid's kid's kids could have been taken care of but because of a decision that was made that I have to live with.

So, when I have an opportunity with Marc, who I trusted and still trust even though I have learned things about him I did not know that was brought up during this whole process thanks to Paul Simons, I, I needed somebody who could be a second set of eyes for me. So, as we grew this thing and I wanted to take it public, I doubt that'll ever happen, though, I'm not saying it's impossible but right now I'm just trying to figure out how to still create value in this company for our 200 and some odd shareholders, I wanted to have someone with a second set of eyes so that it wasn't just me trying to make the right, making a decision.

Because my brother now, of course, he's sick. He's got cancer. He's got a broken back. Not that I would ever turn him for those kind of, sort of macro, sort of where the markets heading, after that move. So, having somebody that I could trust to be my guide was really important to me. And that's why I engaged him.

I mean, yes, he had some people. He had people that, to come and buy some of my stock and, and he was excited, I was excited about it. It was my first bit of liquidity in a very long time. It was good for the company because I didn't have to take so much money from the company which wasn't taking that much to begin with for quite a, a long period of time. But, it was a way to, to really kind of take things to the next level for the company, for myself, and build something special.

People, even Simons, thought this was a $2 to $4 million company. That's why I brought Marc Mandel on. So, I expected Marc to be my guy, to be the guy that I can, that I can trust. Not just an advisor, you know, a money manager. Just some guy who I like, who I trust, who, we have the same, same objectives. That's why I hired him. And that's why I gave him the bonus I gave him because he earned it. Because he was my guy and I trusted him.

And he's been f'd by this whole process. It's not fair. He's not a bad guy. I know it's not for me to say but it's just been unbelievable what's going on here. I'm not saying we're perfect and I take responsibility of everything going on here. I did it, I did it, it's fine. Nothing purposely. I take responsibility. Some of this stuff is, sorry, I'm done.

MR. STANG: Without the comment.

THE WITNESS: I'm done, next question.

BY MR. FORKNER:

Q Did Mr. Mandel provide you with any sort of tangible work product?

A Are you talking, referring to written documentation?

Q Right.

A No. I never asked him for any.

Q I'm handing you what's marked as Exhibit No. 47. Please take a minute to review it. For the record, Exhibit No. 47 begins on JJFOX67. It goes through JJFOX79. It appears to be an account statement from Apex Clearing Corporation?

(SEC Exhibit No. 47 was marked for identification.)

A Okay.

Q Mr. Fox, are you familiar with Exhibit No. 47?

A Yes.

Q Can you tell us what it is?

A It is a monthly statement for my Apex Clearing account through my brokerage from Ditto trade.

Q I'd like to draw your attention to the page that's marked JJFOX73. Towards the top of that page there appears to be a check that was written to Mr.

EXHIBIT – 8

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of:)
) File No. 3-16795
JOSEPH J. FOX)

ADMINISTRATIVE PROCEEDINGS - PRE-HEARING CONFERENCE
PAGES: 1 through 38
PLACE: Securities and Exchange Commission
175 West Jackson Blvd., Room 900
Chicago, Illinois 60604
DATE: Monday, March 21, 2016

The above-entitled matter came on for hearing, pursuant to notice, at 1:00 p.m.

BEFORE (via telephone):
CAMERON ELLIOT, ADMINISTRATIVE LAW JUDGE

Diversified Reporting Services, Inc.
(202) 467-9200

APPEARANCES:

On behalf of the Securities and Exchange Commission:
JEDEDIAH B. FORKNER, Senior Attorney
ANNE C. McKINLEY, Assistant Director
JOHN E. BIRKENHEIER, Supervisory Trial Attorney
Division of Enforcement
Securities and Exchange Commission
175 West Jackson Boulevard
Suite 900
Chicago, Illinois 60604

On behalf of the Respondent (via telephone):
JOSEPH J. FOX, PRO SE

P R O C E E D I N G S

JUDGE ELLIOT: We're here in the matter of Joseph J. Fox, Securities and Exchange Commission Administrative proceeding ruling. I'm sorry, Administrative Proceeding No. 3-16795.

My name is Cameron Elliot, Presiding Administrative Law Judge. Can we have appearances from counsel, please?

MS. McKINLEY: On behalf of the Division of Enforcement, you have Anne McKinley, Jed Forkner, and John Birkenheier.

MR. FOX: Your Honor, I'm the respondent, Joseph J. Fox, and I'm here pro se.

JUDGE ELLIOT: All right, very good. Okay. So I sent out my order in which I described where I think the case stands, and I want to be clear from the beginning that when I said at the end of the order that we may need a hearing in this case, I mean that very, very -- I was very deliberate about that.

I was quite serious. We may need a hearing or we may not. It just depends. And the area where I think that I really need some more help is in the two Steadman factors that we discussed in the order, scienter and then essentially Mr. Fox's

professional status, if you will, whether his occupation presents an opportunity for future violations.

One of these issues is uniquely in the control of Mr. Fox; that is, by his occupation, and I understand the parties dispute scienter, but all I really have to go on for scienter is simply what's in the OIP, and then -- I guess it was the uploaded e-mails that Mr. Fox sent out after the OIP issued, and that's it.

So let me first turn to Ms. McKinley. Is there anything more that you can send me, in the way of transcripts or other documentary evidence, or anything else that might shed some light on Mr. Fox's state of mind?

MS. McKINLEY: Your Honor, we believe we do have testimony transcripts from Mr. Fox's testimony during our investigation that does shed light on that issue. To be frank, it doesn't shed a tremendous amount of light, but it may be helpful for you to see. So we're certainly happy to provide that to you.

As far as other documents, there really aren't any other documents that we think would assist you with any finding on scienter. Though,

there is another FINRA filing regarding Mr. Fox's licensure from August of 2015, in which he sought to reinstate his licensing. That also may be of help.

JUDGE ELLIOT: Okay. Well, I'll get to that in a moment, but why don't we do this, I've still got some time left before I have to issue the initial decision. So I think I can consider yet another round of briefing on this issue. I would like to start with that.

If it turns out that I really feel like we have a live animal, I'm at the point now we're probably going to have to ask for an extension of time on the initial decision.

MR. FOX: Your Honor, if I may, this is Joe Fox.

JUDGE ELLIOT: Yes. Hold on just a second, Mr. Fox. Hold on just a second.

MR. FOX: Sorry.

JUDGE ELLIOT: As I was saying, I think I'm probably going to have to ask for an extension if we do end up having a live in-person hearing. So I think on the issue of scienter, I'm probably going to ask the parties to send me some more documents, whatever it may be.

Now, Mr. Fox, you, of course, will get a

chance to submit more evidence, too, but if that doesn't answer your question, or answer the concern you were about to raise, go ahead and tell me what you were about to say.

MR. FOX: Your Honor. Okay, well, thank you very much for this opportunity. And, for the record, I asked for a hearing, in-person hearing, with the Division while we were talking about settlement from the get-go.

I want to be able to get everything out there in the open. Like, many times I volunteered with the Division through the investigation, I volunteered to meet with them. I volunteered information. I've been 100 percent forthcoming.

I asked to have a hearing. They did not want to guarantee a hearing. And I would like to make a statement, if I may, that I think really goes to where we're at in this proceeding, if I may, Your Honor.

JUDGE ELLIOT: Go ahead. Yes, go ahead.

MR. FOX: Thank you, sir. And obviously I've never done this before, and I've never done pro se or not pro se or with an attorney. Excuse me if I'm a little nervous.

On September 8th, an order was finalizing

my settlement discussions with the Division of Enforcement. During the settlement discussions, I pushed for bifurcated settlement with non-monetary sanctions to be determined by Your Honor through the ALJ process.

I'm happy to accept the monetary sanction of $35,000. I asked for the bifurcation, and the Division told us in no uncertain terms, they would not process the agreed-upon settlement for the company until I finalized my own settlements.

Your Honor, since my company was collapsing under the weight of the former employee, who proved to be a false, malicious whistle blower, I needed to give my company and shareholders a fighting chance.

And almost as importantly, I should not have to accept any industry suspension for the following reasons: A, I've been an extremely conscientious broker or executive, as I've laid out in detail in my court papers.

B, I have a well-documented career of always putting my customers and shareholders first. C, it's absolutely non-public assessment to suspend me for any period of time.

D, any violations were 100 percent

inadvertent and not done so recklessly. And E, most importantly, I do not do anything with scienter.

So the proceedings can fully determine if there was a heap of a non-monetary assessment, again with the Court setting a briefings schedule.

The Division filed a lengthy motion for summary disposition where they tried to paint me as an unrepentant recidivist and asked for a collateral bar offered by you. I then filed a detailed reply.

The Division then filed its reply where they chose to label me falsely as someone who spent the majority of his career in a, quote, a penny stockbroker.

Although the motion was fully briefed for ruling, this Court, on January 15, 2016, in its effort to leave no stone unturned, entered a new order inviting the SEC to submit a supplemental briefing addressing solely the alleged sinter, a necessary elements of the Division's own claim against me, an element the Division did not revise, let alone prove in its motion.

The Division promptly filed a supplemental brief in support of its motion for summary disposition, which I replied to in detail, as it were, after being fully briefed with the Division's

motion for summary disposition and the supplemental brief in support, and of course my responses.

This Court thoughtfully held that there was no scienter, and the SEC's motion was denied, albeit without prejudice. I respectfully ask the Court to consider entering the final order that denies the motion with prejudice.

The third thing that is on the Division is to prove scienter. The Court ruled against them. You made it quite clear that the scienter is a necessary element, and I quote, you must consider when determining whether the sanctions sought by the Division on the public venture, end quote.

That is in your January 15 order, and you cited two case for the same requirements, the Gary M. Korman case, and the Steadman versus SEC case.

Respectfully, I do not believe it's in the public's best interest to have the matter fully briefed, and then after accepting and finding that an element of the claim had not been proven, have the same claim continue to hearing.

I just don't see how this matter can proceed on these facts, and the failure of the Division to prove scienter not once but twice, to allow a third bite at the apple seems unjustified on

this record.

Most importantly, Your Honor, there is absolutely and unequivocally, as Ms. McKinley just stated, no official documentation, testimony, or fact for that matter, that the Division would be able to provide that would change the fact that there was never any scienter.

If they haven't, Your Honor, which would be impossible because it doesn't exist, they would have certainly already made it available to you, to the Court. I'll end here.

I'm praying with the Court to enter a final order denying the SEC's motion for summary disposition with prejudice. Thank you, Your Honor.

JUDGE ELLIOT: All right, very good. Well, I hear what you're saying, Mr. Fox. Let me hear if the Division has anything to say in response to that. Ms. McKinley?

MS. McKINLEY: Your Honor, first of all, we would respectfully disagree with Mr. Fox's characterization of the Steadman factors and how they are waived to determine whether a bar is in the public interest.

It is a true weighing under the case law, and these aren't elements of a particular claim. So

the factors -- while one factor may weigh in favor of the respondent, other factors may weigh in favor of the Division's request for a sanction. So we do disagree with that characterization and feel that really another round of briefing may actually get the information that may assist in making a determination on this issue.

JUDGE ELLIOT: All right.

MR. FOX: Your Honor, if I may.

JUDGE ELLIOT: Go ahead, Mr. Fox.

MR. FOX: Okay, thank you. Your Honor, you made it clear in your initial findings that there was not any evidence, or they did not prove anything. You gave them the opportunity to provide more, if it was necessary, and they did their reply.

They included nothing new, because there was nothing additional; and now, Your Honor, even Ms. McKinley stated, except for what they're saying on August of '15, where I reapplied for the SEC, of which by the way was only done because we would no longer have these Series 27 financial operations principal, and I was dealing with the SEC because no one else was in the company. We were going out of business, and the FINRA knew that.

So it is a mischaracterization of what was

going on, and it never processed through that, nor did I go through this whole MC200 process. I was trying to do what was right for the company, which, Your Honor, I've done for 22 years.

And they've never once ever acknowledged the fact that I have been a conscientious person in this industry for 20 years, not just as a broker, but the CEO of brokerage firms that have been innovative that could have easily had all kinds of complaints against them, and I have a spotless compliance record.

I took the company public, Your Honor. I went through the SEC process. I never had an issue. I never had concerns, and I never for one second did anything with intent or scienter. I took responsibility.

Ms. McKinley and Mr. Forkner made it clear or believe that I did not, even though from day one, as testimony will show, I did make it clear that I took responsibility, if I was using the wrong exemption or the wrong definition within the exemption 504 and 506.

As I showed, Your Honor, there is no information within the study material or the test that breaks down the actual disclosure requirement.

So, Your Honor, clearly there is no additional information of any substance, if at all. You already made it clear, Your Honor, regarding the Steadman case, that scienter is a big factor, and there is no scienter, Your Honor.

JUDGE ELLIOT: Okay. Let me move to the second issue, which is the question of Mr. Fox's occupation.

The evidence that I've seen so far, and I'm looking at the OIP, which of course I can take generally as true, the submissions by Mr. Fox, which I've looked through carefully, just the recent comment by Ms. McKinley just a few moments ago, Mr. Fox's attempt to get another license in August of last year, I have to say that you take all that together, I find myself, frankly, very confused about what is going on with Mr. Fox and his professional status.

So let me just ask you, Mr. Fox, to --

MR. FOX: Okay.

JUDGE ELLIOT: -- tell me about yourself. How do you make a living right now? What is the status of your company? What is the status of whatever licenses you have now or used to have or trying to get? Just tell me about yourself.

MR. FOX: Thank you, Your Honor. Well, as I mentioned, in regards to my license, I withdrew voluntarily in December of 2014. I also made it clear at that time to the SEC that I have no intention of staying in the brokerage business, being in the brokerage business, running a brokerage firm, even though my parent company is an up bearing company at the time, I did own a brokerage firm, but I was not going to be involved in it.

I didn't want to be. I actually hired this guy Paul Simon to become CEO of the brokerage firm, but he failed to get licensing. So the only reason I went back in August because I told FINRA, and they need needed me to do it, we ordered a FINOP.

We had the money to hire an outside FINOP. The company was on verge of collapsing. Somebody had to be the one to communicate with FINRA, during for focus filing and things of that nature. It was a brutal time.

MS. McKINLEY: Mr. Fox, I'm sorry, the court reporter can't take down what you are saying.

JUDGE ELLIOT: Hold on, Mr. Fox.

MS. McKINLEY: I'm so sorry, but the court reporter cannot transcribe. He's moving a little

too quickly, Your Honor. Mr. Fox, could you speak a little more slowly?

MR. FOX: Okay. I'm sorry about that. In December of --

JUDGE ELLIOT: Hold on a second, Mr. Fox. Hold on a second. Let me turn to the court reporter.

Can you read back your transcript, the last part of your transcript that you were able to get down clearly?

(The reporter read back the record.)

JUDGE ELLIOT: Go ahead, Mr. Fox.

MR. FOX: Sorry about that, ma'am. I really apologize. The name is FINRA, F-I-N-R-A, and they regulate the brokerage industry, along with the SEC, of course.

So at the time, we were out of money. The company was on the verge of collapse. I was the only person to be able to speak to FINRA, as we were going through this process. It wasn't like I was trying to be a broker or even the CEO. That was not my objection. FINRA absolutely knew that.

Unfortunately, because I used the word or allowed the word "willful" to be included in my order, only because, of course, the definition in

the footnote, which isn't consistent with the actual definition of wilful, but I understand that, that it would take a process called MC200 to override that, which I did not go down that path; and openly, I let FINRA know I would be communicating with them as a representative, but not as a licensed individual. So that is that.

On December 18th, 2015, we were forced to file a broker-dealer withdrawal, a BDW, with the SEC and FINRA, because we were out of capital. We knew that we were no longer -- we no longer had enough or would no longer have enough proper capital, net capital, to maintain a brokerage firm.

So I talked to FINRA. I let them know. I even let the SEC know, and we had to withdraw. Since then, we tried to figure out if the company could survive as a technology company because as Your Honor hopefully as you read, we did build some incredible technology that did receive some significant media attention.

I did get some attraction with customers, generating millions of dollars in revenue; but, unfortunately, because of the efforts of other people, as well as the weight of the investigations and so on, that I have to say that was brought on by

information by an individual that none of which, as I mentioned in my document, is a part of this process now. It doesn't change the fact we had to deal with that.

My entire company has collapsed. We have four or five judgments from vendors against us. We are trying to figure out if we can figure out where to get the money to file a proper bankruptcy for the company. There is no operations. There is no office. There is no phone.

We are -- our shareholders, and myself, my family, and my mother, we lost our entire investment. I, Your Honor, I am broke. I have nothing. I've been left with nothing.

And I, right now, am living in a house that's owned by my in-laws, thank God. I am living by the grace of my in-laws. I have no job. I can't even apply for unemployment because my last paycheck from the company, even though we were around for these two years, was more than two years ago.

So the State of California said, "Sorry, we cannot give you unemployment." So I have to borrow money even to fill my tank, Your Honor. I have been destroyed by this. My company has been destroyed.

There was never a scienter. There was never an intent. I've been nothing but conscientious for 20 plus years. I have been labeled falsely on several different fronts. I've taken so much abuse from this whole process. Your Honor has been unbelievably fair in its assessment, and I truly believe that, look, I'm not looking to be in the brokerage business, Your Honor.

I will not allow, without a fight, to lose or to be considered someone who should have been barred or banned. And the fact that they were looking for one year, when I asked for the bifurcation, they were looking for one year that I could not accept, and then to go to five years and whatnot, to find various excuses which weren't true to try to be a penny stock guy, even to get that one year.

I mean, this has been an unbelievable circumstance, Your Honor. I've done -- look, I take responsibility for what occurred. I had the SEC review my documents, the same documents, and the same exact circumstances in 1999, and nothing told me otherwise that I was working off the wrong exemption.

I have always looked out for my

shareholders. It's well documented. It's on the SEC's website. I can point to three or four different circumstances, and I've taken as a big fine, which I have not been able to pay. I don't know how I can pay it.

The told the SEC from the Division, excuse, from day one that I don't have the money to pay it. I lost everything. The stock that I sold is gone. I put every last dollar to try to keep the company live, and other people get a waiver after they're fined.

I asked the Division, "Would you consider that?" They said, "No, we won't." So everyone else gets a waiver -- not everyone, but people do, but not Joe. I don't know why, but not Joe.

And so I have taken more for something that was not done with scienter, that was not done advertently, the one that I took responsibility for the, one that I've assured Your Honor and the Division that I would never violate again.

To pile on with a summary disposition for a collateral bar is too much, but Your Honor has ruled now twice, and I've been here, Your Honor. I'm not looking to get back into brokerage. I don't know how I'll do past this moment.

I don't know. I really do not know. I know I don't have money. I know I have to borrow money for anything that I have for needs. I think I'm negative in my one bank account right now, but I will figure it out. And, thank God, I have family that's helpful. Thank God.

Right now I do not know what my plan is, but I can promise you, Your Honor, that it's not going to be in the brokerage business. I've been so abused by a membership organization which, by the way, Your Honor, for 20 plus years I never had one issue, one customer complaint on my FINRA, or on the brokerage side.

Not an issue with arbitration, not a customer complaint, not a single issue after millions of trades with customers. I was so conscientious. I gave away so much money back to customers, whenever there was a technical issue, a trade issue. E*TRADE, Ameritrade, nobody does that, but I did that.

I stood by my customers. I stood by my shareholders, always. So, Your Honor, I don't know what my future is going to be in terms of what I'm going to do. I don't plan on being in the business.

I cannot accept a bar, and if you say to

ever plan to be.

I purposely did not even allow many penny stocks to be quoted or purchased on our website as the story in Barron's Magazine showed, and so we're a private company.

There is one line of a reference to a penny stock, and sometimes listed on the SEC website that I was able to find, one line. It said a penny stock is sometimes a private company, but the reality is this is not a penny stock. It was a private company.

I sold some of my founder shares under advice of counsel, under what's known as I believe 401-and-a-half, and the only mistake that was made there, Your Honor, is that my attorney unfortunately -- my in-house attorney provided me with the documentation. It did not have a section for being a credit investor.

And I believe the people that bought, because some of them were disingenuous, they already showed they were accredited. I believe they were accredited. I'm sorry that that was missing. I should have known that, but my attorney needs to put that in there.

I stool took responsibility for that, Your

Honor. I offered to pay back the two people for 42 or $47,000. I offered these individuals. They said, "No, it was not going to be part of the settlement." I was willing to repurchase when I had the money, and that was not part of it.

I took responsibility, but I was never a penny stock. My stock was not sold as a penny stock. It was a private company. Nobody, nobody considers us, a private company like ours, to be a penny stock. Your Honor --

JUDGE ELLIOT: Okay. Let me ask one more question. Suppose that someone were to offer you employment as an investment advisor, okay, I mean not individually, but you would be associated with a registered investment advisor, is that the kind of employment that you would be willing to take?

MR. FOX: Absolutely not, Your Honor. I've never acted as an investment advisor. I don't have the proper licensing to be an investment advisor.

I have no plan, nor will I ever, refile anything with FINRA ever, because they also put us through a two-year process just to walk away when it was all done and say, "We'll just defer to the SEC." Even after, even after a global disposition, all of a sudden, "Okay, there obviously is no real need for

this investigation."

I mean, we were coming -- people were coming at as from all sides. I have no desire to be in an industry that has no respect for somebody who has been so conscientious, and nobody can say otherwise of how I treated my firm, my customers, my shareholders and my employees.

So, Your Honor, I have no desire, nor will I be, an investment advisor. I'm going to work for an investment advisory firm. I'm not going to work for a municipal bonds company, a credit rating company, and absolutely not a penny stock company, but that does not mean that I can accept a documented suspension for something I don't deserve, Your Honor.

JUDGE ELLIOT: All right. Thank you, Mr. Fox. Ms. McKinley, do you have anything to say about what Mr. Fox has just explained?

MS. McKINLEY: Yes, Your Honor. I guess the one point that we would like to bring to your attention is that Mr. Fox has raised funds and owned four companies over the last approximately 20 years those four companies, two of them have been broker dealers, and directly connected to the brokerage business.

JUDGE ELLIOT: Okay.

MR. FOX: Excuse me, if I may, Your Honor.

JUDGE ELLIOT: Hold on, Mr. Fox. Hold on. Hold on, Mr. Fox. Let me ask a few more things of Ms. McKinley.

So as I understand, I don't mean to put words into Mr. Fox's mouth, but my understanding based on what he just explained is he doesn't know what he's going to do in the future, but he doesn't wish to work in the securities industry anymore.

Do you dispute that, Ms. McKinley?

MS. McKINLEY: This is, frankly, the first time we've heard in detail what his future plans are. We have no way or reason to dispute that.

JUDGE ELLIOT: Okay.

MS. McKINLEY: But I will say, Your Honor, that in December of 2014, Mr. Fox told us at that time, through his attorney, that he never had any intention of being licensed again, that he had withdrawn all of his licenses and wasn't going to do anything with respect to the securities industry again.

But then in August of 2015, this application for the FINOP was filed, and we were not notified of that fact at the time. So I guess we

EXHIBIT – 9

Jeremy Mann
To: Paul M. Simons
RE: RE: RE:

September 8, 2013 at 6:51 PM

He called me, I didn't answer. He called Adam, he didn't answer. Then he called Brian, told hlm he was firing you. Brian called Adam, then Adam told me.

from: Paul M. Simons [mailto:[redacted]
Sent: Sunday, September 08, 2013 5:49 PM
To: Jeremy Mann
Subject: Re: RE: RE:

Cool- what did he say and to whom did he say it - any reasons. etc - and does he know i am in chicag - can only email rght niw

Paul M. Simons

[redacted]

On Sep 8, 2013, at 6:47 PM, Jeremy Mann <[redacted] wrote:

Ok. Joe is firing you Tuesday.

from: Paul M.Simons[redacted]
Sent: Sunday, September 08, 2013 5:46 PM
To: Jeremy Mann
Subject: Re: RE:

Do not mention t am coming to Chicago pls - on plane now

Paul M. Simons

[redacted]
Work (312) 263-5400
Cell (310) 610-7002

On Sep 8, 2013, at 6:44 PM, Jeremy Mann <[redacted] wrote:

Paul,

Call me or Adam ASAP.

EXHIBIT
tabbies
Simons
6

EXHIBIT – 10

From: **Patt, Jeffrey R.** <jeffrey.patt@kattenlaw.com>
Date: Fri, Aug 23, 2013 at 2:30 PM
Subject: 4(1-1/2)
To: "Stu Cohn (scohn@dittoholdings.com)" <scohn@dittoholdings.com>

Stu, you might have thought I was being facetious, but in fact, this is from a book I published about 2 years ago on Stockholders Agreements:

Generally, if a stockholder might be deemed to be an "affiliate" of a privately held issuer,[1] such stockholder will not be able to satisfy the requirements for public information and market-based transactions under SEC Rule 144. In other words, given their proximity to non-public information of the issuer and the inability to rely on the passive manner of sale requirements in Rule 144(f), an affiliate of a privately held issuer will, in effect, always be presumed to be an "underwriter" for purposes of Rule 144. However, if a stockholder is not an affiliate and the issuer is not a reporting company under the Exchange Act, and such stockholder has held its stock for at least one year,[2] such stockholder should be able to satisfy the requirements of the first paragraph of this legend in connection with a transfer of its stock in the Company.

This, of course, leaves the question as to how a stockholder who wishes to sell shares of the Company's stock in a private transfer permitted under the stockholders' agreement, but who is an affiliate or has held such shares for less than one year, would satisfy itself, and the issuer, that it is not engaged in a distribution of securities and not an underwriter? The answer might be the somewhat imperfect, but accepted, notion of a "4(1½)" transaction. To begin with, there is no Section 4(1½) of the Securities Act. Rather, this phrase refers to a "hybrid exemption not specifically provided for in the 1933 Act but clearly within its intended purpose"[3] that is available for secondary sales by stockholders under Section 4(1) that are effected in a manner similar to private placements by issuers under Section 4(2).

Beyond this statement of principle, the SEC staff has offered little guidance.[4] While practices vary, a legal opinion from the transferee's counsel as to the availability of the "Section 4(1½)" exemption should suffice in most cases. However, an issuer should consider requiring representations as to some or all of the following facts from the seller and purchaser, as applicable, to the extent they might be relevant to a proposed "Section 4(1½)" transaction: (i) a seller representation that it acquired the shares for investment purposes and not for distribution, (ii) particularly if the sale

occurs within twelve months of the issuance, seller and purchaser representations as to the circumstances giving rise to the proposed transaction (and, possibly, that any such discussions did not commence until after the issuance of the securities), (iii) representations from both parties that the proposed secondary sale was not the result of any general solicitation by the seller, and (iv) standard private placement representations from the purchaser, **including that it is an accredited investor,** it is acquiring the shares for investment purposes and not for distribution, it understands the securities are restricted securities, subject to additional contractual restrictions in the stockholders' agreement, and that it has the means to hold the investment for an indefinite period of time.

A selling stockholder also might be able to rely on the exemption from registration afforded by SEC Rule 144A to the extent the proposed purchaser meets the definition of a "qualified institutional buyer," or QIB, under Rule 144A[5]. Essentially, a QIB means an institutional investor with at least $100 million in investment securities of entities not affiliated with such investor—*e.g.*, insurance companies, pension plans, investment companies, and so on—that are viewed as having enough investment experience to be able to fend for themselves in the private resale market for restricted securities[6]. However, where the issuer is not a reporting company, Rule 144A requires that both the selling stockholder and its purchaser must have the right to obtain from the issuer, upon request, reasonably current information regarding the nature of the issuer's business and the products and services it offers, the issuer's most recent balance sheet, income statement and statement of retained earnings and similar financial information for each of the two preceding fiscal years, in each case, audited to the extent reasonably available[7]. The granting of this access right requires the involvement of the issuer. Thus, in some cases, the parties to a stockholders' agreement who contemplate that stockholders might rely on Rule 144A for permitted transfers will include an information right such as the one set forth in Section 8.3 of the sample stockholders' agreement, discussed later in this section.

In many private placements, an equity investor will intend to, or in some cases, might be required to, sell down a portion of its investment shortly after closing. For example, if a private equity sponsor is investing through a fund and the proposed investment is at or above its fund's limit on investment size, the sponsor might seek a waiver from its investment committee, or possibly its limited partners, to waive the limitation so long as the sponsor undertakes to sell down below the investment limitation as soon as practicable following closing. In effect, the fund would be acting as a bridge investor with respect to this portion of the investment, and from a federal securities law perspective, could be viewed as having some of the attributes of an ""underwriter" of these securities. This does not mean, necessarily, that Rule 144 and the principles stated above regarding "Section 4(1½)" would not be available to the fund, or that a sponsor and its counsel could not get comfortable with this issue otherwise. It is not uncommon for sponsors, with their counsel, to assess the facts and circumstances surrounding an immediate sell down of a portion of an investment and conclude that they are not engaged in an underwriting.

JEFFREY R. PATT
Partner
Katten Muchin Rosenman LLP
525 W. Monroe Street / Chicago, IL 60661-3693
p / (312) 902-5604 f / (312) 577-8864
jeffrey.patt@kattenlaw.com / www.kattenlaw.com

[1] Directors, officers, and 10 percent of stockholders generally are presumed to have the requisite degree of control or influence over the issuer to be regarded as affiliates for this purpose as defined in Rule 144(a)(1).

[2] The minimum holding period under Rule 144 is six months if the issuer is, and has been for a period of at least ninety days, a reporting company under the Exchange Act. 17 C.F.R. § 230.144(a)(1)(i) (West 2009).

[3] Employee Benefit Plans, Securities Act Release No. 6188 (Feb. 1, 1980).

[4] Pursuant to a policy described in Securities Act Release No. 6253, the SEC staff does not express any view on the availability of an exemption from registration under Section 4(1) or Section 4(2) "or by implication the Section 4(1½) exemption." *See* Procedures Utilized By the Division of Corporation Finance For Rendering Informal Advice, Securities Act Release No. 6188 (Oct. 28, 1980).

[5] 17 C.F.R. § 230.144(a)(1) (West 2009).

[6] *See* Resale of Restricted Securities, Changes to Method of Determining Holding Period of Restricted Securities Under Rules 144 and 145, Securities Act Release No. 6806 (Nov. 1, 1988).

[7] 17 C.F.R. § 230.144(d)(4)(i) (West 2009).