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May 2, 2018

Via E-Mail and Facsimile
Mr. Brent J. Fields
Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090
Facsimile: (202) 772-9324

Re: In the Matter of Joseph J. Fox - Administrative Proceeding File No. 3-16795

Dear Mr. Fields,

I am in receipt of the Division of Enforcement's "response" to my February 27, 2018 letter. This letter, along with the attached Memorandum, is my reply. I respectfully ask the Commission to make it part of the record.

Since the Division is fighting my request for an in-person hearing and oral arguments, and my earlier request to the Commission was denied, I feel it is my duty to respond to a few of the (mis)statements made by the Division of Enforcement, through Ms. McKinley.

To be clear, my letter of February 27, 2018 was not "***another review of the Initial Decision***." It is and was clearly meant to reinstate my Motion for Reconsideration of the March 24, 2017 Opinion ("Original Opinion") that was never ruled upon. Especially since there is so much confusion as it pertains to the ratification process, and whether or not that Motion is still being considered.

As the Division stated, "***A motion for reconsideration is an "extraordinary" remedy "designed to correct manifest errors of law or fact or to permit the presentation of newly discovered evidence.""***

With all due respect, it is completely disingenuous for the Division to state that "***Fox has not...identified any manifest error of law or fact.***" In my Motion for Reconsideration, I disclose a minimum of two significant manifest errors that any reasonable individual would believe had the potential to have an impact on the Commission's decision to confirm the ALJ's April 25, 2016 Initial Decision. (See Memorandum below)

As this will be my last communication with the Commission, I would like to make one final plea.

ALJ Elliot admits that the **sole** reason for doing a 180-degree reversal from **denying** the Division's Motion for Summary Disposition to then **granting** it less than 6 weeks later, was because of the uncovering of what he states was an unknown case that had a bearing on his decision.

> ***"Abraham and Sons Capital, Inc., holds that it is reckless for a securities professional to fail to be knowledgeable about, and to comply with, regulatory requirements to which he is subject. See 55 S.E.C. at 268. Abraham and Sons Capital, Inc., first came to my attention during the six weeks preceding issuance of the ID. That is, I changed my mind in light of newly discovered case law."***[1]

Now juxtapose ALJ Elliott's reason for his unprecedented reversal, with the following:

On January 20, 2017, the amendment to Rule 504 became effective. The relevant change is the increased maximum offering amount from $1 million to $5 million.[2] The disclosure requirement did not change.

The OIP specifically lists four different offerings conducted by Ditto Holdings, Inc., as well as the sale of some of my personally owned shares.[3] The largest "offering", for common stock, raised $3.7 million from 104 investors, purportedly including 31 non-accredited investors.

The violations listed on the OIP were based primarily on a lack of financial disclosures (specifically audited financials) to non-accredited investors, as required under Rule 506.[4]

In other words, none of the acts that were considered violations of the federal securities laws in the September 8, 2015 OIP would be a violation today.

I respectfully argue, that since ALJ Elliott's decision to reverse course on his original decision to impose a collateral bar was based solely on ***"newly discovered case law"*** (putting aside my prior argument of relevance, or why it changed the ALJ's entire perspective on my actions), it would be more than just for the Commission to reverse course one last time based on an actual change in the Securities rules that today negates any possible violation of the Securities laws.

Please feel free to contact me if you have any questions.

Respectfully,

Joseph J. Fox

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[1] See Order Denying Respondent's Motion to Correct a Manifest Error of Fact Pg. 2, para. 3

[2] The SEC publicly announced its proposed changes on October 30, 2015. Obviously, the discussions were going on within the SEC for a considerable length of time prior to the announcement.

[3] I sold these shares with advice of counsel pursuant to Rule 4(1)½.

[4] As stated in footnote 3 of the OIP, Ditto Holdings sole operating subsidiary, Ditto Trade, was audited annually.

MEMORANDUM

First, I would like the Commission to consider the factual error regarding the purported assurance to the Law Judge as stated in the Original Opinion:

> "Finally, we are concerned that Fox's occupation will present opportunities for future violations. Fox contends that he has left the securities industry and that he voluntarily withdrew his securities licenses. But the Division contends, and Fox does not dispute, that after he made the same representation to the law judge, he applied to FINRA for a Financial and Operations Principal ("FINOP") license. We therefore find no value in Fox's assurances about leaving the industry. To the contrary, given his recent attempt to obtain a FINOP license and his long career in the industry, we find it probable that he will continue in it unless barred." (March 24, 2017 Opinion, page 8, para. 2)

> "*In other words, the Commission believed that I had recently attempted to obtain a FINOP license through FINRA, AFTER supposedly making a representation to the Law Judge that I had no intention of returning to the securities industry. Thus, rendering any assurance made by me to have "No value."*

> *However, this information is factually incorrect. I never applied to FINRA for anything AFTER making any representation to the Law Judge. In fact, the last time I applied for anything with FINRA, was in August 2015, which of course, was PRIOR to these proceedings.*" (May 8, 2017 Motion for Reconsideration, Page 3)

Second, and most importantly, I would like the Commission to consider the false statement from the Original Opinion, that a May 18, 2016 FINRA administerial bar related to a missing updated mailing address (and the subsequent missed request for 3 monthly bank statements), 14 months after I voluntarily withdrew my various FINRA licenses, was an <u>aggravating factor:</u>

> "Fox claims that his clean disciplinary history and absence of customer complaints are mitigating. But as noted above, Fox's disciplinary history is not clean; in 2016, FINRA barred him for failing to respond to a request for information. This is an aggravating factor." (March 24, 2017 Opinion, page 9, para. 4)

> "*First, prior to September 2013, when this investigation began due to the false allegations of a former employee, I had a 20 year exemplary record with the SEC, FINRA and state regulators. I had conducted millions of trades for customers all over the world as the CEO of two innovative brokerage firms (one of which I took public)," and I had no regulatory issue, no customer issue, no issue whatsoever. In fact, I had a well-documented history of always putting the interest of my shareholders, customers, employees and regulators, ahead of my own.*

> *Second, the Notice of Suspension from FINRA was dated May 18, 2016. What does this mean? It means that there was no reason that the Division should have completely ignored my spotless regulatory history during the two years leading up to, and including, the September 8, 2015 OIP.*

It means that there was no reason that the ALJ should have completely ignored my spotless regulatory history leading up to, and including, the April 25, 2016 Initial Decision.

It means that there was no reason that the Commission in their Opinion, should have ever called a FINRA bar created by an administrative slip up, that occurred AFTER a spotless 20+ year career and 2 ½ years of dealing with the SEC in this matter, "an aggravating factor."" (May 8, 2017 Motion for Reconsideration, Page 5)

In other words, despite the Divisions false assertions, I have in fact presented a minimum of two manifest errors of fact that clearly warrants an extraordinary remedy. Such remedy should be the ultimate finding, that it is not in the public's interest to impose a collateral bar on me for any length of time.

March 2016, after being fully briefed, ALJ Elliott asked the Division for any evidence of scienter. The Division complied. I responded.

OIP Was in Fact Signed Under Duress

It is true that the OIP states that in these proceedings, I would be "***precluded from arguing that [I] did not violate the federal securities laws as described in the Order or from challenging the validity of the Order; that the findings in the Order would be accepted and deemed true by the hearing officer.***"

However, I have provided clear evidence that I was forced to sign the OIP under duress. Here is the language from my September 22, 2016 Reply Brief in Support of the Petition for Review of the Initial Decision:

"I would like to address the Division's rebuttal of my claim that I was forced to sign the OIP under duress[5], and that there were inaccurate facts in the OIP that were brought to the Division's attention before it was finalized. The Division recites that for this process I am obliged to agree that the facts are true. Given the circumstances that surrounded my signing the OIP, including the Division deliberately stalling the settlement process and giving misleading assurances, however, that is simply not justice."

"*Fox's claim in his Petition for Review that he "was forced to ultimately agree to an OIP that had inaccurate facts (which were made clear to the Division before signing the OIP under duress)" is* ***patently false****. (Petition for Review at 20.) While Fox has proceeded pro se during the litigated portion of these proceedings, he was represented by counsel throughout the Division's investigation and during all settlement negotiations. (Pre-Hearing Conference Tr. at 29, 33.)*"

That I was represented by counsel during most of the "negotiations" does not mean that I

[5] This assertion by me in NO way lessens my contrition for any unintentional violation of Section 5.

wasn't under duress when I signed the OIP. In fact, it is the following email communication between the Division and Ditto's General Counsel Stuart Cohn that proves that I was forced to sign my OIP in order for the Company to have a chance at survival:

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 the Division's settlement offer, signed and notarized. Mr. Cohn was led to believe that the Company's settlement would be promptly going through the Commission's review process.

On March 18, 2015, more than 5 weeks after submitting the signed settlement agreement, outside counsel for Ditto Holdings spoke with Mr. Forkner and Assistant Director 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."***

Once it became clear that the Division had wasted precious time misrepresenting the process, and given the dire circumstances of our company, I had no choice personally but to get a deal signed at the earliest opportunity. This was in an effort to save my Company and the $13 million worth of investments made by over 200 people. If I had known that my Company was going to fail anyway (under the weight of Paul Simons and his all-out assault to kill the Company), I would under no circumstances have agreed to the OIP. I would have fought the false allegations until I couldn't fight any more.

That I was represented by counsel is a red herring. All that meant was that my lawyer had a ring side seat for the choke-hold in which an agency of the federal government was holding me and the company I founded. Was my lawyer supposed to show up in the lobby of the SEC Chicago office and jump and down demanding the Division keep its word that the Company's settlement would be submitted to the Commission for approval as soon as it was signed? My lawyer was obviously powerless to ameliorate that deliberate display of nonfeasance by the Division.

I am obliged to bring to the attention of the Commission that I signed my OIP in month 22 of an intensive, and I believe unwarranted, two-year investigation[6].

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[6] The SEC investigation overlapped with a nearly identical 20-month FINRA investigation, that also began in September 2013, when Paul Simons contacted a friend who worked in the Office of the General Counsel for FINRA. In May 2015, FINRA, who had previously filed a "Wells Notice" threatening all kinds of sanctions, finally closed their investigation without any further proceedings and chose to defer to the SEC.

This investigation was instigated by a completely disingenuous letter delivered on September 9, 2103 by Paul Huey-Burns (a Washington area attorney) who had previously worked at the SEC and was on a first name basis with the Chicago office Associate Director, Robert Burson, and others. This letter contained more than a dozen false allegations[7].

Not only had Simons' attorney never seen the documents that he claimed supported the allegations (a matter that I am pursuing in a separate forum but which I would encourage the Commission to investigate), but the allegations themselves were also unfounded.

In his letter to Mr. Burson, Huey-Burns who was obviously trying to impress his new clients with his SEC connections, falsely stated that "***allegations are substantive and well documented***", and that I was "***in the process of perpetrating a fraud***". Huey-Burns also wrote that "***there is significant evidence of Mr. Fox's misfeasance***" and there is concern "***that Mr. Fox and others may attempt to create post-hoc documents to justify the apparently illegal transactions***."

Understand that the only document Huey-Burns had in his possession was an email from Simons that clearly showed that I was in fact in the process of firing Simons for reasons that (obviously) had nothing to do with him reporting his (false) allegations days later.

The email in Huey-Burns possession began with a message from Brian Lund (a co-founder of the Company) to 26-year-old junior executive Adam Stillman. Lund ended the email to Stillman with:

> "***I don't see, barring a miracle, how Paul stays with the company.***"

Stillman forwarded Lund's email to Simons telling him that:

> "***Brian has spent time tonight trying to talk joe out of firing you.***"

Simons responded two minutes later with:

> "***Thanks.***"

Unfortunately, Huey-Burns chose to conceal this information from the SEC[8], thus making it possible for Simons for nearly two years to perpetuate the lie[9] that he was wrongfully terminated for reporting to the SEC wrongdoing by me and my Company.

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[7] It is important to note that neither the September 9, 2013 letter, nor any other communication by Huey-Burns or Simons with the SEC, ever brought up the unintentional violation of Section 5 (lack of enough financial disclosures to non-accredited investors under Rule 506) as purported in the OIP.

[8] This information was hidden from me and the Company as well for nearly 20 months.

[9] Simons subterfuge included the filing of a false and perjured Form TCR in December 2013.

In a follow-up email that Huey-Burns sent Mr. Burson the next morning, Huey-Burns, in an effort to get the SEC to act quickly, incredulously told Mr. Burson, absurdly that, "***we are concerned that bank statements and other documents may be subject to destruction or alteration***." Obviously, Huey-Burns was well aware of the SEC's subpoena power and that, in the 21st Century, a bank customer could scarcely destroy bank information by discarding paper statements. Therefore, Huey-Burns did not make this ridiculous claim because he was concerned that I was destroying irretrievable evidence. Rather, he sought to impeach my honestly and instigate an SEC investigation.

Hence, without ever making any kind of preliminary inquiry to test the validity of the allegations of a disaffected former officer, the regional Division office launched a crushing two-year investigation that resulted in exactly none of the original allegations against me and the Company ever being proven true (for good reason), but also resulted in the demise of Ditto Holdings. That a lawyer-friend of an SEC Division manager was able to procure "preferred customer" treatment on behalf of a disaffected and hostile former employee, and thereby accomplish this misuse of the powers of government, resulting in great harm to over 200 investor-shareholders, should offend all citizens. This is a system that is badly broken.

The miscarriage of justice continued throughout the entire two year "investigation" conducted by the Chicago office of the Division of Enforcement.

Incorrect Fact in the OIP - Violations Were NOT Recurrent

The Division's false claim in the OIP that Ditto Holdings had a greater number of non-accredited investors over a longer period of time. This allowed for a significant mischaracterization of the recurrent nature of my inadvertent violations.

On December 22, 2014, Ditto's General Counsel Stuart Cohn sent the Division a revised draft OIP with corrected non-accredited numbers. In the cover letter, Mr. Cohn Stated... "*We have corrected some of the statistics describing our offerings in paragraph 2 under 'Offerings'.*"[10]

The corrected numbers were as follows:

Period	Division's #	Our Corrected #
April 2009 to March 2012	13	4
June 2012 to Jan. 2013	10	8
Dec. 2012 to Sept. 2013	31	25

[10] See December 22, 2014 email correspondence previously provided to the Commission.

On January 6, 2016, Mr. Cohn had a telephone conversation with the Division. During that call, the Division's attorneys told Mr. Cohn that they would not correct the number of non-accredited investors as we had requested. The Division stated that our corrected numbers did not jibe with what they had, so they wouldn't change it. Mr. Cohn asked the Division to forward him what they were basing their numbers on.

On January 6, 2015 at 12:14pm central, Jed Forkner for the Division sent the following:[11]

> *Stu:*
>
> *Per our discussion, I have attached the document that we used in counting the number of non-accredited investors.*
>
> *Thanks,*
>
> *Jed*

Attached to the email, was a spreadsheet that Mr. Cohn, nor I, had ever seen before. It was presumably created by the Division during their investigation, by reviewing ALL of our investors Subscription Agreement[12]. The problem was that the spreadsheet was factually incorrect. Whoever inputted the information about the investors accredited status, counted 17 accredited investors as non-accredited. Mr. Cohn argued vociferously that the Division had erred, and that they could simply re-review the documents in their possession (including a detailed spread provided by the Company showing all non-accredited.

Yet they refused to move forward with the settlement, unless I agreed to the inclusion of the inaccurate information. Once again, in an effort to allow my Company a chance to survive, I agreed to sign the inaccurate OIP, once the Division reversed course, and made it clear that they would not agree to the approved settlement with my Company unless I agreed to their OIP as is.[13]

The evidence that the Division was in possession of the information that corroborated our corrected numbers was both in the documents we provided the Division, as well as the files provided to me in a hard drive by the Division in November 2015. This hard drive contained approximately 350,000 pages of files. Unfortunately, approximately 100,000 pages are non-searchable images (versus searchable PDF's, Emails, Word docs and text docs). Meaning, that you have to go through these images one by one to find what you are looking for (I am not sure why this was the case, as we sent the Division all of our files in their native format).

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[11] See email correspondence, previously provided to the Commission.

[12] As with all of the Division's requests, we provided the Division with every one of our investors Subscription Agreements going back to early 2009.

[13] See the June 10, 2016 Respondent Fox's Petition for Review of the Initial Decision pgs. 16-18

Here are two of the Subscription Agreements in question that I uncovered in image form (an exercise that took nearly 5 hours).

F. Karlin Subscription Agreement, SEC file number = SEC_Ditto-EPROD-00000911 through 00000917

S. Karlin Subscription Agreement, SEC file number = SEC_Ditto-EPROD-00000926 through 00000932

Both of the shareholders checked off that they were an accredited investor in section 6.[14]

I have also previously provided the Commission four of the original Subscription Agreement in question[15] that was in the Division's possession. As you can clearly see, all four indicated that they were an accredited investor.

In other words, the corrected number of four non-accredited investors during April 2009 to March 2012 was in fact the correct number (as was the 2 fewer in the June 2012 to January 2013 period, and the 6 fewer in the December 2012 to September 2013 period). The Division had all of the facts in their possession, but failed to properly prepare a spreadsheet.

In their August 29, 2016 Brief in Opposition of my Petition for Review, the Division falsely stated:

> "*Fox claims in his Petition for Review that his illegal sales occurred during a smaller window,* ***but his claim is contradicted by the evidence gathered in the Division's investigation...***"
>
> (Page 10 of the Division's August 29, 2016 Brief in Opposition of my Petition for Review.)

This falsehood by the Division is important for the following reasons:

This knowingly false information in the OIP on the number of non-accredited investors over a much longer period of time surely had a significant impact on the ALJ's ruling in his Initial Decision that my actions were egregious and recurrent. In their August 29, 2016 Brief in Opposition of my Petition for Review, the Division falsely stated..."***Fox's violations were not isolated, but rather they were frequent and continued over the course of more than four years.***"

In my Brief in Support of my Petition for Review, I stated as follows:

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[14] As an aside, both of these shareholders were actually gifted these shares by a family member. This occurred in both May and October 2010. The Division incorrectly categorized 3 of the 4 transactions as non-accredited investors.

[15] One of the actual non-accredited investors purchased stock on two separate occasions during the time period in question, for a total investment of $12,500. To be clear, the OIP states the number of "*non-accredited* ***investors*** *who purchased*" stock. Not, how many times did a non-accredited investor purchase stock. Another individual the Division incorrectly categorized was G. Shanberg. Shanberg was a co-founder of Ditto Holdings and already possessed 500,000 shares of Ditto Holdings founder shares at the time of his additional purchase in September 2009.

> *"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.* ***A period that we had both in-house counsel and outside counsel.***
>
> *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."*
>
> (Page 13 of my Petition for Review of the Initial Decision.)

In other words, my violations were significantly less recurrent than the Division led the ALJ to believe. In addition, during the 10-month period where the Company sold stock to 90% of all its non-accredited buyers, the Company had in-house as well as outside lawyers to provide legal counsel on these matters[16]

As I have previously stated, in an effort to allow my Company a chance to survive, I agreed to sign the OIP with knowingly inaccurate information, once the Division reversed course, and made it clear that they would not agree to the approved settlement with my Company unless I agreed to their OIP as is. (See the June 10, 2016 Respondent Fox's Petition for Review of the Initial Decision pgs. 16-18)

One has to wonder why it is so important to the Division, that the ALJ and the Commission not be aware of the falsities in the OIP. The only explanation is that the actual number of non-accredited investors and the period in which they invested, completely changes the "egregiousness" narrative from 4 ½ years to just 10 months.[17] A period of time when the Company and I had both inhouse counsel and outside securities counsel and had all of our offerings fully reviewed by FINRA regulators during their annual exam.

Lastly, having to represent myself Pro se, I have come to realize that I should have fought harder regarding the false narrative that was created regarding a letter to shareholders and press release, announcing the settlement of the 2 year investigation.

First, it should not have been included in the Divisions Motion for Summary Disposition as it was after the conclusion of the investigation. Second, it was purposely mischaracterized by

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[16] Once again, this fact is not mention to lessen the importance of providing the proper disclosures to non-accredited investors under Rule 506.

[17] 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. (August 1, 2016 Brief in Support of the Petition for Review of the Initial Decision, Page 14, para. 2)

the Division and former shareholder Larry Wert (who provided the info, an attestation, and I am sure verbal testimony that I have not been provided.)

Lastly, ALJ Elliot admits that the sole reason for doing a 180 degree reversal from denying the Division's Motion for Summary Disposition to granting it less than 6 weeks later, was because of the uncovering of what he states was an unknown case that had bearing on his decision.

"Abraham and Sons Capital, Inc., holds that it is reckless for a securities professional to fail to be knowledgeable about, and to comply with, regulatory requirements to which he is subject. See 55 S.E.C. at 268. Abraham and Sons Capital, Inc., first came to my attention during the six weeks preceding issuance of the ID. That is, I changed my mind in light of newly discovered case law."
(See Order Denying Respondent's Motion To Correct A Manifest Error of Fact Pg. 2, para.3)

However, forgetting the fact that I have argued repeatedly that the "new case" is not relevant (not to mention that unlike any of my activity, the violations in Abraham and Sons were committed while acting in a registered capacity), the uncovering of the "recently uncovered case law" does not explain why the ALJ's entire attitude towards me and the events in my matter changed instantly from one of compassion and understanding to one of **sarcasm and disbelief.**

I would like to provide one example:

In the Initial Decision, ALJ Elliot stated the following:

"Nonetheless, a stock priced at less than five dollars per share can be a penny stock, even if it is not traded publicly. See 17 C.F.R. § 240.3a51-1. If anything, Fox's suggestion to the contrary further supports the finding that he is not knowledgeable regarding applicable regulatory requirements. See Motion at 12 & n.3; ID at 7."

In my June 10, 2016 Petition for Review of the Initial Decision (pg. 12-13), I stated the following:

"I have to take umbrage with ALJ Elliot here. First, it was the Division who misled this Honorable Court that Ditto Holdings was a "traded" penny stock. 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?*

Ms. McKinley: *Your Honor, it is. While Ditto Holdings was not publicly trading during the time, it was offering its shares under Reg D, in a Series 506 offering, as well as some other offerings of Mr. Fox's own personal shares of Ditto Holdings, and all of the shares were sold at prices under $5. The range I think was from about 50 cents to about a dollar-and-a-half.*

Judge Elliott: *Okay. All right. Well, thank you, Mr. Fox. Anything else you want to add?*

Mr. Fox: *Yes, if I may. You know, I think you're as surprised as I was, Your Honor. Not to put words in your mouth, but I'm just blown away by [the Division] saying that I was a penny stock guy. I was in the penny stock world my whole career, trying to stop me from being in the penny stock business, which was only a label that would hurt me because I've never been in the penny stock bus[iness]. I don't ever plan to be. I purposely did not even allow []any 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.*

I proceeded to make it clear that I was in fact "*knowledgeable regarding applicable regulatory requirements*," when I continued with the following:

Mr. Fox: *There is one line of a reference to a penny stock, [that exists] 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 [in the commonly understood sense].*

It is quite clear by ALJ Elliot's confusion (created by the Division) that he, like me, believed that Ditto Holdings did not fall into the category of "penny stock" in the commonly understood sense. Besides, the one line on the SEC website that references that "***the definition of penny stock can include the securities of certain private companies with no active trading market***," does little to explain what circumstances need to be met, as it says "can" and not "is"." (emphases added)

Yet, for some unknown reason, after ALJ Elliot's "***discovered***" the Abraham and Sons case, he leveraged Ms. McKinley's false assertion that Ditto was a penny stock to denigrate my understanding of the Securities Laws.

For the record, the one line that I correctly referenced during the March 21, 2016 pre-conference hearing is included on a page entitled "**Penny Stock Rules.**"[18] The exact language reads:

[18] https://www.sec.gov/fast-answers/answerspennyhtm.html

> The term "penny stock" generally refers to a security issued by a very small company that trades at less than $5 per share. Penny stocks generally are quoted over-the-counter, such as on the OTC Bulletin Board (which is a facility of FINRA) or OTC Link LLC (which is owned by OTC Markets Group, Inc., formerly known as Pink OTC Markets Inc.); penny stocks may, however, also trade on securities exchanges, including foreign securities exchanges. ***In addition, the definition of penny stock can include the securities of certain private companies with no active trading market. (emphasis added)***
>
> Penny stocks may trade infrequently, which means that it may be difficult to sell penny stock shares once you own them. Moreover, because it may be difficult to find quotations for certain penny stocks, they may be difficult, or even impossible, to accurately price. For these, and other reasons, penny stocks are generally considered speculative investments. Consequently, *investors in penny stocks should be prepared for the possibility that they may lose their whole investment (or an amount in excess of their investment if they purchased penny stocks on margin).*

Lastly, it is important to note, that on an SEC.gov page entitled **"Important Information on Penny Stocks"** (OMB: 3235-0434, Dated October 31, 2011),[19] the SEC doesn't even reference the rare incidences where a private domestic company "can" be considered a "penny stock" as portrayed by the Division to the ALJ.

For the past 20 years, I had been the CEO of several self-directed discount stock brokerage firms. During that time, I have 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.

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[19] https://www.sec.gov/investor/schedule15g.htm

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, [I] 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 and [and the Division of Enforcement] had all of the FINRA information above in hand.

Conclusion

I respectfully ask the Commission to consider both my May 8, 2017 Motion to Reconsider the original March 24, 2017 Opinion, as well as both my January 6, 2018, February 27, 2018 and May 2, 2018 letters to the ALJ, and to once and for all DENY the Division of Enforcement's Motion for Summary Disposition with Prejudice.