UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:	
Ronald S. Bloomfield,	:	**ADMINISTRATIVE PROCEEDING**
Robert Gorgia,	:	**File No. 3-13871**
Victor Labi,	:	
John Earl Martin, Sr., and	:	
Eugene Miller	:	

REPLY BRIEF OF DIVISION OF ENFORCEMENT IN RESPONSE TO THE *ORDER DIRECTING ADDITIONAL BRIEFING* DATED JULY 11, 2012

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July 30, 2012

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The Division of Enforcement respectfully submits this reply brief pursuant to the Commission's *Order Directing Additional Briefing* dated July 11, 2012.

PRELIMINARY STATEMENT

To minimize the seriousness of their violations of Section 17(a) of the Exchange Act and Rule 17a-8 – and to attempt to keep the $1.2 million in commissions they received during the period of the violations – Bloomfield and Martin repeatedly claim that the nine securities for which the Division of Enforcement submitted Attestations of non-registration "are the only identified securities placed into issue in the OIP and at the hearing of this case." Resp. Supp. Br. at 3. *See also* Resp. Supp. Br. at 3 (Initial Decision was "based on evidence pertaining only to the Relevant Securities"); at 4 (Uselton and Thimble accounts "were never the subject of the OIP"); at 5 ("[t]he evidence at the hearing pertained only to such securities"); at 6 (the nine securities "are the only securities on which evidence was introduced").[1]

Bloomfield and Martin are wrong. Although the evidence supporting the Section 5 charges includes the nine securities, the evidence of the scope of transactions in the Uselton and Thimble accounts is far more extensive. The OIP, the evidence at trial, and the Initial Decision all focused extensively on transactions from early 2005 through mid-2007 in the six Uselton accounts and in the Thimble account, and not merely on the nine Section 5 securities. *See, e.g.* OIP ¶¶ 47-48; ID at 3 ("customer accounts at Leeb engaged in 1,193 transactions of over three

[1] Bloomfield and Martin also claim that the Division's response to their Motion for a More Definite Statement supports their position that the nine Section 5 securities were "the only identified securities placed into issue in the OIP and at the hearing of this case." Resp. Supp. Br. at 2-3. That response, however, concerned only the Section 5 claim and not the Section 17(a)/Rule 17a-8 claim. In fact, the Section 17(a)/Rule 17a-8 allegations in the OIP focus on transactions in particular accounts, and the Division's response to the Motion for a More Definite Statement also makes clear that the transactions in the Uselton and Thimble accounts are the focus of the charges and of the evidence. *See* Division of Enforcement's Memorandum of Law in Opposition to Motion of Respondents Ronald S. Bloomfield and John Earl Martin Sr. for a More Definite Statement dated June 2, 2010 (Attachment).

billion shares of securities . . . Leeb accounts sold over three billion shares"); Div. Ex. 1 (Expert Report of Robert W. Lowry, *passim*); Div. Exs. 329-341, 355-360. The Initial Decision in particular focuses on the transactions in these Leeb accounts, not simply on the nine Section 5 securities, and demonstrates the overwhelming evidence of Bloomfield and Martin's illegal conduct. ID at 5-10, 15-19, 20-27.

By falsely claiming that the evidence did not go beyond the nine Section 5 securities, Bloomfield and Martin hope to discredit the basis for the disgorgement order, which covered all commissions earned by them on the six Uselton accounts and the Thimble account from October 2005 through June 2007. The law judge's disgorgement order, however, is squarely within the scope of precedent holding that profits received during the period of the violations are deemed to be causally connected to the wrongdoing and therefore subject to disgorgement. *See Matter of Riordan*, Admin. Proc. File No. 12829, 2009 SEC LEXIS 4166 at *89 (Dec. 11, 2009) ("Courts have held that '[i]t is proper to assume that all profits gained while [Respondents] were in violation of the law constituted ill-gotten gains.'"); *SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1114 (9th Cir. 2006) ("[T]he amount of disgorgement should include all gains flowing from the illegal activities."); *SEC v. Drexel Burnham Lambert, Inc*, 837 F. Supp. 587, 612 (S.D.N.Y. 1993) ("Since it is difficult in many cases to separate legal from illegal profit . . . ***it is proper to assume that all profits gained while defendants were in violation of the law constituted ill-gotten gains***.") (emphasis added).

As the Division offered a reasonable approximation of the profits causally connected to the violations, the burden shifts to Bloomfield and Martin to rebut the presumption that all profits gained while in violation of the law constitute ill-gotten gains. "[T]he risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." *SEC v. First City Fin.*, 890

F.2d 1215, 1232 (D.C. Cir. 1989). Bloomfield and Martin, who argue that disgorgement on the Section 17(a) claim should be zero, fail to meet their burden. They cite to only one case, *Hateley v. SEC*, 8 F.3d 653 (9th Cir. 1993), which misses the mark.

In *Hately*, the Ninth Circuit held that the Commission abused its discretion by not setting aside a disgorgement order that exceeded the amount "actually retained" by the defendants. 8 F.3d at 655. That holding, however, is inapplicable here because there is no disagreement regarding the amount of commissions received. Bloomfield and Martin do not dispute that Division Exhibit 361, showing $1.2 million in commissions, represents the actual commissions received from the Uselton and Thimble accounts from October 2005 to June 2007.

The violations by Bloomfield and Martin were not mere technical oversights. The activity in the Uselton and Thimble accounts was highly suspicious and unusual and occurred over a prolonged period of time. As gatekeepers, Bloomfield and Martin were obligated to cause Leeb to file reports regarding this activity. They knowingly failed to do so in order to preserve the large commissions generated by the transactions. Under the facts of this case, allowing Bloomfield and Martin to retain the profits from the Uselton and Thimble accounts would reward their illegal conduct and would also provide an incentive for brokers to conceal suspicious activity. As the courts have long acknowledged, "[t]he effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable." *SEC v. First Jersey Sec. Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996).

BLOOMFIELD AND MARTIN'S RESPONSES TO THE QUESTIONS IN THE *ORDER DIRECTING ADDITIONAL BRIEFING*

Question No. 1

Do Bloomfield's and Martin's alleged Securities Act Section 5 violations relate solely to the securities specifically identified in the OIP?

Bloomfield and Martin respond that the nine Section 5 securities "are the only securities on which evidence was introduced at the hearing in this matter." Resp. Supp. Br. at 6. As already shown, this claim is false as the Division introduced extensive evidence of trading in customer accounts at Leeb, including the Uselton and Thimble accounts.

Question No. 2

What are the amounts of commissions earned by Bloomfield and Martin that may be attributed to the Securities Act Section 5 violations alleged in the OIP as wrongfully obtained profits of such alleged violations?

In their response, Bloomfield and Martin understate the commissions received by Bloomfield because they fail to take into account the 12.5% "override" that Martin paid Bloomfield. As a result, and as explained in the Division's brief dated July 20, 2012, the commissions earned solely from the Section 5 securities is $82,678 for Martin and $23,336 for Bloomfield.

Question No. 3

Did Bloomfield's and Martin's conduct underlying the alleged Exchange Act Section 17(a) and Exchange Act Rule 17a-8 violations relate solely to the securities specifically identified in the OIP?

Bloomfield and Martin's only response to this Question is to repeat their false assertion that the nine Section 5 securities "are the only securities on which evidence was introduced at the hearing." Resp. Supp. Br. at 8. This is simply not true.

Question No. 4

What are the amounts of commissions earned by Bloomfield and Martin that may be attributed to the Exchange Act Section 17(a) and Exchange Act Rule 17a-8 violations alleged in the OIP as wrongfully obtained profits of such alleged violations?

In their response to Question No. 4, Bloomfield and Martin argue that "it is hard to imagine how the failure to file such [suspicious activity] reports would have profited them at all." Resp. Supp. Br. at 8. The evidence, however, proves that Bloomfield and Martin failed to cause Leeb to file SARs in order to allow the commissions to continue. In their prior firm, the compliance officer closed the Uselton accounts after several months due to the suspicious activity, and Leeb's clearing firm also closed accounts due the the nature of the penny stock transactions. The suspicious activity in the Uselton and Thimble accounts was rampant, sustained and flagrant. If Bloomfield and Martin had caused Leeb to file SARs, then their commissions would have been at risk. *See* Div. Br. dated July 20, 2012 *passim*.

Question No. 5

How did the conduct underlying the alleged Exchange Act Section 17(a) and Exchange Act Rule 17a-8 violations result in Bloomfield's and Martin's gaining those wrongfully obtained profits?

Bloomfield and Martin again assert that they "are unable to see how their failure to [cause Leeb to file SARs] . . . resulted in their gaining any profits." Resp. Supp. Br. at 8. As previously discussed, the causal connection between their conduct and the profits arises from the fact that the profits were earned during the period of the violations. Their motive in failing to cause Leeb to file SARs was to continue to receive the commissions from the tainted Uselton and Thimble accounts.

Question No. 6

How are those wrongfully obtained profits a reasonable approximation of the amounts of Bloomfield's and Martin's unjust enrichment resulting from the alleged Exchange Act Section 17(a) and Exchange Act Rule 17a-8 violations?

Bloomfield and Martin's six-word response to Question No. 6 – "The answer is they are not" – demonstrates their strategy to simply ignore the evidence of their obligation to cause Leeb to file reports based on the numerous, and obvious, red flags relating to transactions in the Uselton and Thimble accounts. They understood that doing so would put their profits from these accounts at risk; therefore, the profits from these accounts, beginning in October 2005, nearly one year after they transferred the Uselton accounts to Leeb, represent a reasonable approximation of their unjust enrichment. "[A] district court has broad equity powers to order the disgorgement of ill-gotten gains obtained through the violation of the securities laws. Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable." *SEC v. First Pac. Bancorp,* 142 F.3d 1186, 1191 (9th Cir.1998) (quotation marks and citations omitted). "[T]he amount of disgorgement should include all gains flowing from the illegal activities." *SEC v. JT Wallenbrock & Assocs.,* 440 F.3d 1109, 1114 (9th Cir. 2006) (quotation marks omitted). Disgorgement need be "only a reasonable approximation of profits causally connected to the violation." *First Pac. Bancorp,* 142 F.3d at 1192 n.6.

CONCLUSION

The disgorgement award in the Initial Decision represents a reasonable approximation of Bloomfield and Martin's ill-gotten gains and should be affirmed in its entirety.

Dated: New York, New York
July 30, 2012

Respectfully submitted,

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