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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16647

In the Matter of IREECO, LLC and IREECO LIMITED Respondents.	DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENTS IREECO, LLC AND IREECO LIMITED

I. Statement of Facts

Respondents spill much ink over issues not in dispute. They say they did not commit fraud, but neither does the OIP. They say they did not know what they were doing was illegal, but the Division seeks only first-tier penalties, which do not require a finding of deliberate or reckless disregard of the regulatory requirement. On this latter point, however, the OIP makes clear the conduct Respondents engaged in—advising investors which was the "right regional center to invest with" and being "paid fees for actively soliciting over 158 foreign investors," who "invested a combined total of $79 million"[1]—placed them at risk of being found to have acted as a broker. *See, e.g., SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005) (defendant who neither worked for issuer nor received compensation but "was regularly involved in communications with and recruitment of investors for the purchase of securities" found to be broker). Moreover, Respondents amplified that risk by continuing to engage in the conduct after becoming aware of the Division's investigation.[2]

[1]OIP §§ III.B.8, III.B.17.

[2]Respondents were first contacted by the Division in May 2012. (Respondents' Response at 2) Respondents claim that because they subsequently did not hear from the Division for a 10-month period (April 2013 to February 2014), they inferred it was permissible for them to continue to act as brokers. (Response at 2-3) However, Respondents

II. Respondents Fail to Meet their Burden of Showing the Division's Disgorgement Estimate is Unreasonable

Respondents cannot seriously dispute the general disgorgement principles the Division cited in its motion. While Respondents attempt to distinguish *Ralph Calabro*, AP File No. 3-15015, 2015 WL 3439152 (May 29, 2015), on the basis that it involved fraud, they cite nothing for the proposition that the Commission would calculate disgorgement differently depending on a Respondents' culpability. *Compare* Securities Exchange Act of 1934 ("Exchange Act") Sections 21B(e) and 21C(e) (In "*any* [Cease-and-Desist or Administrative] proceeding . . . , the Commission . . . may enter an order requiring . . . disgorgement . . . .") *with* Exchange Act Section 21B(b) (maximum civil penalty amounts vary depending on respondent's culpability and amount of gain or loss).[3]

Here, because Respondents were unregistered, the Exchange Act made it unlawful for them to "effect" any securities transactions or "induce or attempt to induce the purchase or sale of . . . any security." Exchange Act Section 15(a)(1), 15 U.S.C. § 78o(a)(1). However, Respondents did just that, and the stipulated facts detail Respondents' actions to cause investors to invest in securities through the regional centers.[4] The regional centers compensated Respondents for their unlawful conduct, paying them "for each registered investor who invested

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make no claim that they attempted to contact the Division during this period or were somehow misled. Respondents, having followed a "let a sleeping dog lie" strategy, can hardly complain when the dog proves to have been awake.

[3]15 U.S.C. §§ 78u-2(b), 78u-2(e), 78u-3(e). With respect to commissions being an appropriate measure of disgorgement with respect to a non-scienter violation, *see Ronald Bloomfield*, AP File No. 3-13871, 2014 WL 768828, **20-21 (Feb. 27, 2014) (Commission Opinion) (ordering disgorgement of commissions for sale of unregistered securities).

[4]OIP §§ III.B.11-15.

funds in an EB-5 offering."[5] These fees were "commissions based on a fixed portion of the 'administrative fee' the investor paid to the regional center."[6]

The Division's proffer of a reasonable approximation of the "gains flowing from the illegal activities" shifts to Respondents the burden of showing that the Division's approximation is unreasonable. *Ronald Bloomfield*, 2014 WL 768828, *20. Respondents apparently attempt to meet this burden by "unbundling" their fees, claiming they provided services to investors not related to the investment. In support of this claim, Respondents cite only the investigative testimony of Stephen Parnell, where he stated that Respondents would typically make a follow-up call to investors, one purpose of which was to see "what is [the investor's] understanding of American business, what do they know about actually coming to the US as far as logistics, schools, driver's licenses, medical care, just to see their level of understanding to see where I can help them." (Respondents' Response, Exh. C, at 29:21-30:5) Respondents do not attempt to value these services or proffer a basis to determine if any portion of the commissions they received is attributable to the "help" to which Mr. Parnell was referring. Respondents bear the risk of uncertainty in the disgorgement calculation, *Scott Stephan,* AP File No. 3-16312, 2015 WL 5637557, *3 (Sept. 25, 2015) (Initial Decision), and "[b]ecause of the difficulty 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," *id.* at *5 (citations and quotations omitted). Respondents provide no basis to monetize a reduction for the "help" they provided investors, and therefore the Commission's disgorgement amount is appropriate.

[5]OIP III.B.16.
[6]*Id.*

III. Civil Penalty

The Division is seeking against each Respondent a one-time first-tier penalty of $75,000. Respondents' opposition consists almost entirely of demonstrating that they did not commit fraud. However, the Division never makes such a claim—the absence of fraud is accounted for by the fact that (a) the Division seeks only first-tier penalties, (b) the penalties requested are a tiny fraction of Respondents' pecuniary gain, and (c) the Division is seeking only a single penalty per Respondent, even though the statute expressly authorizes separate penalties "for each act or omission," even for first-tier violations. *See* Exchange Act Section 21B(b)(1), 15 U.S.C. § 78u-2(b)(1). Finally, Respondents hint at a statute of limitations issue based on the fact that they received some fraction of the fees in question (which were paid between January 2010 and February 2014) prior to the pertinent limitations date of June 23, 2010. However, the issues of fees received prior to June 23, 2010 would be relevant only if the Division were seeking a separate penalty for each fee paid. Here, most of the fees were paid after June 2010, and even a single violation by a Respondent after that date would permit imposition of the requested $75,000 penalty.

III. Ability to Pay

When considering the Division's claim for disgorgement, ability to pay "should be given less weight" than it would in the civil penalty context, because "disgorgement is designed to reverse unjust enrichment, and giving ability to pay significant weight in the disgorgement context would create a perverse incentive for securities law violators to spend ill-gotten gains quickly and without restraint." *Scott Stephan*, 2015 WL 5637557, *4 (reducing disgorgement and prejudgment interest by 50% but waiving civil penalty based on inability to pay).

Here, Respondents' financial data shows that their inability to pay disgorgement, prejudgment interest, and a civil penalty results entirely from Respondents' distributions to their principals. With respect to Ireeco LLC, from January 2010 through December 2012, it distributed a total of $1.7 million, split evenly between the two principals, Stephen Parnell and Andrew Bartlett.[7]

With respect to Ireeco Limited, for the period from February 24, 2012 (its date of incorporation) through March 31, 2013, [redacted]

For the two following years—*after* Respondents knew of the Division's investigation—Ireeco Limited reported the following:

[redacted]

[7]The Division submitted Ireeco's profit and loss statements as Exhibit 3 to the Declaration of Brian James, which was attached as Exhibit A to the Division's summary disposition motion.

[8]Exh. 1 (Ireeco Limited Financial Submission), at 7. The Division has batestamped the documents Respondents submitted in their Response related to Ireeco Limited and has attached them as Exhibit 1 to this Reply. The citations are to the batestamped pages.

[9]*Id.* at 4.

[10]*Id.* at 40.

[11]*Id.* at 42.

[12]*Id.*

[13]*Id.* 30, 42.

[redacted] Under these circumstances, Respondents have failed to show that their self-created inability to pay should be considered at all. *See SEC v. Pentagon Capital Management PLC*, 2012 WL 1036087, *6 (S.D.N.Y. Mar. 28, 2012) ("[T]o the degree that Defendants' [inability-to-pay] argument relies on Defendants' decision to wind down PCM [an entity defendant], PCM's status is self-inflicted, and Defendants have long been aware of this action, their late trading, and their potential liability."), *aff'd in part, vacated and remanded on other grounds*, 725 F.3d 279 (2d Cir. 2013).

CONCLUSION

For the reasons set forth above and in the Division's opening brief, the Division requests that its Motion for Summary Disposition be granted, and the following relief be imposed:

(a) against Respondent Ireeco, LLC, disgorgement of $2,146,116.15, prejudgment interest of $76,211.73, and a civil penalty of $75,000, and

(b) against Respondent Ireeco Limited, disgorgement of $1,479,633.85, prejudgment interest of $52,543.97, and a civil penalty of $75,000.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303 and that a true and correct copy of the foregoing has been served by Email and U.S. Mail, on this 9th day of October 2015, on the following persons entitled to notice:

The Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

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