UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17013

In the Matter of

Allen M. Perres, and
Willard R. St. Germain,

Respondents.

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement ("the Division") respectfully submits this Reply in Support of its Motion for Summary Disposition against Respondent Allen M. Perres ("Respondent" or Perres").

I. INTRODUCTION

In his Response to the Division's Motion for Summary Disposition ("Response"), Respondent completely misconstrues both the standard and purpose of this proceeding and fails to raise a genuine issue with regard to any material fact. The Commission's Order Instituting Proceedings ("Order" or "OIP") established a set of undisputed facts that Perres has agreed not to contest and therefore, liability already has been established in this case. The only remaining issue to be decided is what remedial sanctions should be imposed under Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"). The findings set forth in the Order demonstrate that collateral and penny stock bars against Perres are in the public interest. Respondent spends most of the brief attempting to relitigate the undisputed facts and making

unsupported assertions about his lack of culpability. Ultimately, Perres concedes that he was aware that his conduct constituted a violation of the securities laws and yet inexplicably continued his course of conduct with the company for over 2 years. Moreover, Perres fails to adequately provide any assurances against future misconduct, and in fact questions the reasonableness of the collateral and penny stock bars because they may impede his continuing career in the financial industry. Given Perres' long career in the securities industry, his egregious, intentional and recurrent violations and the strong likelihood his occupation will present future opportunities for violations, the Court should grant the Division's Motion and impose collateral and penny stock bars with the right to reapply for reentry after five years.

II. ARGUMENT

To defeat a motion for summary disposition, the opposing party must demonstrate with specificity a genuine issue for a hearing and "may not rest upon the mere allegations or denials of its pleadings." *See In the Matter of Currency Trading Int'l, Inc.*, Rel. No. 263, 2004 WL 2297418, at *2 (Oct. 12, 2004). A motion for summary disposition should be granted when there is "no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law." Rule of Practice 250(a).

The Commission's Order establishes that for the purposes of this proceeding, the "findings of this Order shall be accepted as and deemed true by the hearing officer." (OIP Section V). As a result, the only issue left to be determined in these proceedings is whether a sanction under Section 15(b)(6) of the Exchange Act is in the public interest according to "the factors identified in *Steadman v. SEC*: the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the

likelihood that the respondent's occupation will present opportunities for future violations." *In the Matter of Gary M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *6 (Feb. 13, 2009).

Respondent's violations of the securities registration and broker-dealer registration provisions were egregious. The regulations at issue are key provisions of the federal securities laws designed to protect investors and regulate those who participate in the securities industry. *Sirianni v. SEC*, 677 F.2d 1284, 1289 (9th Cir. 1982); *SEC v. Benger*, 697 F.Supp.2d 932, 944 (N.D. Ill. 2010). As one of two marketers and as a principal source of information for Southern Cross' investors, Perres violated Section 5 of the Securities Act of 1933 ("Securities Act") by making no attempts to distribute the requisite financial information that investors needed to make informed investment decisions. (*See* OIP ¶ ¶ 8,12, 14.) Despite his protestations to the contrary (Perres Response at 8-9 ("Resp.").), Perres did not inquire as to the sophisticated and accredited nature of the investors he solicited. (OIP ¶ 13.) Similarly, Perres repeatedly offered and sold securities to individual investors for a commission, without registering with the Commission or associating with a registered broker-dealer in violation of Section 15 of the Exchange Act. (OIP ¶¶ 8, 9, 10, 15.)

Perres' violations of these provisions are especially egregious because, as he fully admits in his Response, he knew that without being registered as a broker-dealer he could not earn commissions from soliciting investors. Perres claims that he expressed concerns about raising money from investors, but ultimately agreed to do so, and warned Southern Cross "that neither I or any other person could be compensated for raising money." (Resp. at 4.) Despite this knowledge, he went on to earn over $125,000 in commissions from the sale of Southern Cross' securities. (OIP ¶ 9.)

Notwithstanding Perres' assertion that he agreed to raise funds from investors for only a "few months," he facilitated the sale of securities for over two years and successfully raised money from numerous investors, a fact that he agreed upon in the settled Order. (OIP ¶ 8.)

Although Perres attempts to negate his scienter by characterizing his conduct as mistakes and claiming that at no time was he "willful," this attempt falls flat. (Resp. at 6.) Perres' own response maintains that he ***knew*** that he was not legally permitted to earn commissions from the sale of investor funds, and yet he collected over $125,000 in commissions over the course of two years, thus conceding that he knowingly acted in violation of the federal securities laws. Finally, Perres expressed concerns in his Response regarding what he viewed as Southern Cross' "inappropriate" behavior, and the "improprieties" and "careless" actions of the company. (Resp. at 2,10.) And yet, by his own admission, he never let these misgivings stand in the way of earning substantial commissions.

While Perres attempts to demonstrate his lack of willfulness by maintaining that a rescission offer made by Southern Cross to investors was at his insistence, this assertion is contradicted by his sworn investigative testimony wherein he states that Michael Nasatir, CEO of Southern Cross, was the impetus behind the rescission offer. (Perres Tr., Ex. A 191:9-15.) Perres also tries to characterize the commissions he received as an advance for other work he did for the company. However this unsupported claim is simply not true. The Order clearly establishes, and Perres agreed, that he received over $125,000 in ***commissions***, not advances, from the funds he raised from investors. (OIP ¶ 9.)

Perres has offered no recognition for the wrongful nature of his conduct. Instead, in his Response, he simply maintains that he agreed to the monetary penalty because he should have resigned from Southern Cross earlier after the company "broke its commitments" to him. (Resp. at

6.) This statement does not qualify as any recognition of wrongdoing and instead tries to shift the blame for Perres' misconduct onto others.

Perres makes a futile attempt to assure against future violations while maintaining that he wishes to remain in the industry, thus affording him ample opportunities to violate the federal securities laws again. Perres' claims that he has "no intention of speaking with small investors in the future" cannot be relied upon, as he made similar claims about his intentions not to raise money for Southern Cross, and yet, as he admits, that is exactly what he did. (*Id.* at 7.) Perres makes several references to his pristine record of compliance with securities regulations while glossing over his securities violation from the 1970s. While his violation of the securities registration provision did not occur recently, it does not change the fact that he is a recidivist, and therefore any assurances against future wrongdoing must be viewed with skepticism. Perres repeatedly argues that penny stock and collateral bars would be unfair as they would impose a burden on his ability to maintain a career in the financial industry. He has clearly demonstrated a desire to remain in the financial industry, and with his history of previous violations, it is highly likely that he will be presented with opportunities for future violations.

Finally, Perres asks the court to view the "financial penalty" as "sufficient punishment" and refrain from imposing the collateral and penny stock bars. (*Id.* at 1.) The "financial penalty" to which he refers is not a penalty and is not intended as a punishment, but is in fact disgorgement of ill-gotten gains and is meant to deprive him of unjust enrichment. *See SEC v. First City Financial Corp., Ltd.*, 890 F.2d 1215, 1230-31 (D.C. Cir. 1989) ("[d]isgorgement is . . . designed to deprive a wrongdoer of his unjust enrichment"; "disgorgement may not be used punitively".) The collateral and penny stock bars are necessary as a deterrent and would serve a remedial purpose by

preventing Perres from engaging in similar misconduct in the future and helping to ensure his compliance if he is permitted to participate in the financial industry again.

III. CONCLUSION

For these reasons and the reasons set forth in the Division's Motion for Summary Disposition and Brief in Support, the Division hereby respectfully requests that the Court issue an order barring Perres from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization and from participating in any offering of penny stock with the right to apply for reentry after five years.

Dated: March 25, 2016

Respectfully submitted,

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Exhibit A

Q Okay. Do you know when this was distributed to investors?

A Oh, boy.

Q If you look at that second paragraph on the first page of Exhibit 23, it says, it will commence on March 17, 2014.

A Which I think is what I was going to say, early this year.

Q Why was, why did Southern Cross do a recision offer?

A There was so many changes from the very beginning, as we have discussed in detail. It was, it was Mike Nasatir who said, I, I'm not comfortable with all these changes. I want to sleep at night moving forward. I think we issue offer of recision.

Q What changes what he was referring to?

A Every change we discussed. 300 to 30, not doing oil, the, the, estimating when we would be trading not be accurate, connectivity. All of this, in my opinion, was the basis for that.

Q Did you have any involvement with drafting the recision offer?

A No.

Q Do you know who did draft the recision offer?

A Yes, John Gaines.

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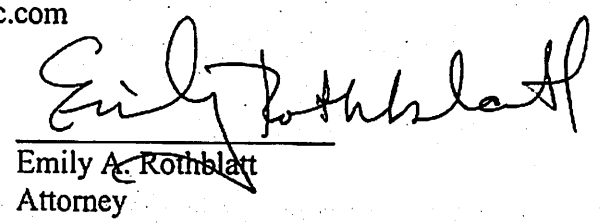
CERTIFICATE OF SERVICE

Emily A. Rothblatt, an attorney, certifies that on March 25, 2016, she caused a true and correct copy of the Division of Enforcement's Reply in Support of its Motion for Summary Disposition to be served on Respondent Allen M. Perres by electronic mail and by UPS Overnight Delivery at the following addresses:

Mr. Allen M. Perres
3406 N. Seminary Ave., Apt. 3
Chicago, IL 60657
aperres@stonearchinc.com

By: 

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