ADMINISTRATIVE PROCEEDING
FILE NO. 3-18422

**UNITED STATES OF AMERICA**
**before the**
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of**

**JOSHUA D. MOSSHART,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S SUPPLEMENTAL SUBMISSION IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION**

**Administrative Law Judge Carol Fox Foelak**

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## I. INTRODUCTION

In its September 10, 2020 Order ("9/10/20 Order"), the Court determined that parties' cross-motions for summary disposition under Rule 250(b), 17 C.F.R. § 201.250(b), could not be granted on the current record. In reaching that conclusion, the Court identified two factual disputes that the record did not resolve: (i) the scope of Respondent Joshua D. Mosshart's association with LPL, and specifically, the veracity of his factual assertions that LPL was "aware of his involvement with Enviro Board and approved it" and that Mosshart had affirmatively "informed lPL that his LPL clients were interested in investing in Enviro Board"; and (ii) Mosshart's regularity of participation in Enviro Board securities transactions at key points in the chain of distribution. 9/10/20 Order at pp. 8-9. On November 2, the Court granted the Division of Enforcement ("Division") leave to make a further evidentiary submission on these issues on or by November 16, 2020.

The Division submits this supplemental brief refuting Mosshart's repeated claim that LPL knew of and approved his selling activities for Enviro Board. As LPL's business records and Mosshart's sworn testimony and submissions before FINRA amply demonstrate:

- Mosshart's contention that LPL approved of his selling away is false.
- Mosshart's apparent excuse – that he did not subjectively understand what selling away was, and so his conduct was reasonable – is equally meritless.

Finally, by Mosshart's own admission to FINRA, he referred 20 investors to Enviro Board over a period of years and undisputedly received hundreds of thousands of dollars in commission compensation. He did so as a licensed securities professional with known compliance responsibilities to LPL, the registrant with which he was associated. The outside business activities requests that Mosshart submitted to LPL in that timeframe – one of which was denied –

fastidiously failed to disclose his selling activities, which were in plain contravention of LPL's prohibition against selling away. Mosshart hid his true involvement with Enviro Board from his employer. That misconduct was intentional, long-running, and in violation of Exchange Act Section 15(a).

As now supplemented, the record before the Court confirms that a permanent bar is compelled by the public interest.

## II. THE DIVISION'S ADDITIONAL EVIDENCE

In its September 10, 2020 Order, the Court correctly noted that Mosshart's December 13, 2013 letter of Acceptance, Waiver, and Consent to his FINRA bar is not issue preclusive in this proceeding. Mosshart nonetheless provided sworn testimony to FINRA on November 20, 2013, authenticated several internal LPL documents in the course of giving that account under oath, and further made several evidentiary submissions when participating in his FINRA case, all of which may be appropriately considered by the Court in the instant proceeding.

### A. LPL Never Approved of Mosshart's Selling Away

#### 1. LPL did not approve Mosshart's selling activities

"Mosshart maintains that LPL was aware of his involvement with Enviro Board and approved it; he maintains that he informed LPL that his LPL clients were interested in investing in Enviro Board." 9/10/20 Order at p. 8. Mosshart's self-serving assertion has no basis in fact and is affirmatively belied by the evidence.

From May 2011 to April 2013, Mosshart received commission compensation for referring individuals to Enviro Board. He was associated with LPL during that timeframe, having worked at the firm from 2004 until his termination in 2012. Leung Decl. at ¶ 3, Ex. 1 (Mosshart FINRA Tr.) at 40:8-12, 97. Mosshart knew he needed LPL's approval to engage in outside business activities. *Id*. at 60:25-61:8 ("Oh, now that's important. So outside business

activity, you have to let them know as soon as you take on any outside business activity because they have to approve it."). To obtain approval, Mosshart had to fully disclose his activities through an outside business activity form, which LPL would then approve or deny. *Id.* at 61:6-8. LPL's written supervisory procedures specifically provided that under FINRA Rule 3040:

> [A]ll associated persons must provide written notice to the member with which he is associating describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction … LPL Financial requires that an advisor must receive written firm approval prior to engaging in a private securities transaction.

*Id.* at 63:4-18; Leung Decl. at ¶ 4, Ex. 2 (Ex. 10; LPL Written Supervisory Procedures). Mosshart knew what this meant. *Id.* LPL's investment advisor compliance manual also delineated the firm's prohibition on selling away, Leung Decl. at ¶ 3, Ex. 1 (Mosshart FINRA Tr.) at 63:25- 64:23, and Mosshart had long-acknowledged the metes and bounds of FINRA Rule 3040's limitation on his outside activities. *Id.* at 67:8-15.

Mosshart twice sought LPL's approval for his outside business activities at Enviro Board. One request was approved, the other was denied. Neither of Mosshart's requests for approval of his outside business activities revealed to LPL the truth of his involvement with Enviro Board – that he was referring investors to the company, some of whom were his LPL clients, in exchange for transaction-based compensation. First, on May 16, 2011, Mosshart sought approval for what he described as a product sales role at Enviro Board: "Sales Representative, Sales of Manufacturing Machine [for] Building panels [and] licenses." *Id.* at 74:1-22; Leung Decl. ¶ 5, Ex. 3 (5/16/11 Outside Business Activity Request). The form that Mosshart completed made no mention of referring clients to Enviro Board for investment in the company, or Mosshart's receipt of transaction-based compensation for that work. *Id.* Rather, once LPL approved the outside product sales request – as misleadingly formulated by Mosshart – the firm admonished

Mosshart that:

> This request has been approved based on the facts submitted to LPL Compliance. Be advised that you are not to solicit any individuals for investment into this entity and you are not to solicit LPL Advisors or Clients for products of this company. Be advised, that you must update LPL Compliance to any material changes regarding this activity including[g] your role, time spent and income earned.

*Id*. (5/16/11 Outside Business Activity Request) at p. 3 (emphasis added.)

Second, on November 5, 2012, Mosshart sought LPL's approval for his Enviro Board board of directors role, which he described as follows: "I am on the board of directors for Enviro Board Corporation. I advise them on strategic partnerships for sales of building materials." Leung Decl. at ¶ 6, Ex. 4 (11/5/12 Outside Business Activity Request). LPL denied the request. *Id*. Once again, Mosshart couched his outside business activity request in half-truths. He did not tell the firm that he was referring clients to Enviro Board for investment, or that he was being paid commissions for it. *Id*.

At the time that he received his May 16, 2011 approval to act as a product salesman for Enviro Board, Mosshart had already referred $30,000 in investment to Enviro Board, and had received a corresponding 10% commission. Leung Decl. at ¶ 7, Ex. 5 (5/16/13 Mosshart FINRA submission) at p. 4. In spite of the clear warning that he was "not to solicit individuals for investment" into Enviro Board, Mosshart's selling away unaccountably continued thereafter. Over the next two years, Mosshart referred another 19 investors to the firm, for which Enviro Board paid him hundreds of thousands of dollars in sales commissions. *Id*.

**2. Mosshart knew he was selling away**

Mosshart's claim that he did not know he was selling away strains credulity. To begin with, LPL's compliance materials and FINRA Rule 3040 leave no room for misunderstanding. Investments in Enviro Board were "private securities transactions," *see* Leung Decl. at ¶ 8, Ex. 6

(defining "Private securities transaction" as "any securities transaction outside the regular course or scope of an associated person's employment with a member"), which Mosshart self-evidently understood given the outside business activities requests he submitted in connection with Enviro Board. Further, Mosshart knew he was receiving prohibited "selling compensation" as part of those "private securities transactions." *Id.* at p. 2 (defining "selling compensation" as "any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security, including, though not limited to, commissions; finder's fee …") (emphasis added.) Mosshart's own evidentiary submission to FINRA described the amounts that he had been paid in exchange for "referring" investors as "commissions." Leung Decl. at ¶ 7, Ex. 5.

Moreover, Mosshart's FINRA testimony betrays the fact that he knew precisely what he was doing. He testified under oath that when he decided to sell his book of business and leave LPL, he did so because "I didn't want to be in a position of selling away." He knew his selling activities at Enviro Board were "a serious matter" and that consequently, he needed to exit the firm and offload his book of business. Leung Decl. at ¶ 3, Ex. 1 (Mosshart FINRA Tr.) at 90:17-92:4. Mosshart's counter-narrative – that on nearly two dozen occasions spanning a number of years, he had been paid substantial commission compensation in exchange for efforts that he had no clue constituted selling away – does not pass the red-face test.

**B. Mosshart's Selling Activities Were Substantial and Spanned Years**

According to Mosshart himself, he referred 20 investors to Enviro Board and was paid $501,056 in sales commissions for those referrals. Leung Decl. at ¶ 7, Ex. 5 at pp. 4-5 ("Below is the dates of all referrals and all fees and commissions paid to me"). The Division's earlier filings demonstrate that Mosshart's attempts to minimize what he did – *i.e.*, according to him, he simply provided those he referred with the names and contact information of others at Enviro

Board – ring false. *See* 5/21/18 Leung Decl. ISO R. 250 Mot. at ¶¶ 10-11, Ex. 8 (Camp Inv. Test.) at 110:10-115:24, 118:5-119:19; Ex. 9 (Peiffer Inv. Test.) at 258:1-23; ¶ 16, Ex. 14 (Decl. of Tina Brodie); ¶ 17, Group Ex. 15 (Mosshart investor communications); 10/24/18 Supp. Leung Decl. ISO R. 250 Mot. at ¶ 2, Ex. A (Mosshart Enviro Board agreement); 3/1/19 2d Supp. Leung Decl. ISO R. 250 Mot. at ¶ 3, Ex. 1 (Christofferson solicitation); ¶¶ 5-6, Exs. 3-4 (Mavilia solicitations); ¶¶ 7-13, Exs. 5-11 (solicitations of potential investors, including provision of PPM). Mosshart did not just "refer" investors to Enviro Board. The record instead demonstrates that he earned the commissions he was paid by regularly participating in Enviro Board's securities transactions at key points in the distribution.

### C. Mosshart's Registration Violations Warrant a Bar on These Facts

Mosshart's misconduct here is in line with that in *Ronald S. Bloomfield* and *Russo Secs., Inc.*, both of which justified the imposition of an associational bar on the basis of registration violations. In *Bloomfield*, the respondents sold, over two years, approximately $2.5 million in unregistered securities. *In the Matter of Bloomfield, et al.*, Rel. No. 416A, 2011 WL 1591553 at *1-2 (Apr. 26, 2011). Here, Mosshart's registration violations extended over a similarly lengthy period of time, and Mosshart in fact solicited far more in investor funds than the respondents in *Bloomfield* – about $5 million, investments that for many resulted in near-total losses. *See, e.g.*, 5/21/18 Leung Decl. at ¶ 16, Ex. 14 (Decl. of Tina Brodie). Similarly, the concrete investor harm that Mosshart's conduct occasioned here far exceeds that in *Russo Secs.,* which addressed net capital rule and books and procedures violations. *See In the Matter of Russo Securities, Inc.*, SEC Rel. No. 44186, 2001 WL 379064, *9-10 (noting no customer harm – "[w]hether any customers were harmed by this conduct is immaterial."). Mosshart was a licensed securities professional, his prolonged selling away was the obverse of an isolated mistake, he sold millions of unregistered securities for hundreds of thousands of dollars of commission compensation, and

he was "at best willfully blind" to the fact of his misconduct. An associational bar is accordingly warranted. *See*, *e.g.*, *In the Matter of Meissner*, SEC REl. No. 768, 2015 WL 1534398, *8-10 (Apr. 7, 2015) (imposing associational bar where respondent raised $355,000 from investors and was paid a 5% commission in only 4 transactions).

## III. CONCLUSION

For all the reasons stated in its supporting submissions, the Division respectfully requests that its motion for summary disposition be granted, and that Mosshart be permanently barred pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

Dated: November 16, 2020

Respectfully submitted,

DIVISION OF ENFORCEMENT

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**Certificate of Service**

I certify that on November 16, 2020, I caused the foregoing to be served on the following persons by the method of delivery indicated below.

| | |
|---|---|
| Vanessa Countryman, Secretary<br>Securities and Exchange Commission<br>100 F. Street, N.E., Mail Stop 1090<br>Washington, D.C. 20549<br>Email: apfilings@sec.gov | (by email and facsimile to<br>(703) 813-9793) |
| Honorable Carol Fox Foelak<br>Chief Administrative Law Judge<br>100 F Street, N.E., Mail Stop 2557<br>Washington, D.C. 20549-2557<br>Email: alj@sec.gov | (by email) |
| Joshua D. Mosshart<br>[redacted]<br>Malibu, CA [redacted]<br>***Pro Se Respondent*** | (by email) |

*/s/ Gary Y. Leung*
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