UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19663

In the Matter of

BRETT HAMBURGER,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR
DEFAULT JUDGMENT AND IMPOSITION OF SANCTIONS

The Division of Enforcement (the "Division"), pursuant to Rules 155(a) and 220(f) of the U.S. Securities and Exchange Commission's Rules of Practice and for the reasons set forth below and the Declaration of Richard Harper, respectfully moves the Commission for the entry of a default judgment and the imposition of sanctions against Respondent Brett Hamburger.

I. INTRODUCTION

On September 12, 2012, the Commission filed a civil enforcement action against Hamburger alleging that he engaged in scheme to defraud and acted as an unregistered broker through his coordination and management of an overseas boiler room scam that sold the securities of Bio Defense Corporation ("Bio Defense"). *See SEC v. Bio Defense Corp.*, 1:12-cv-11669-DPW (D. Mass.), ECF No. 1. After years of litigation, on September 6, 2019, the United States District Court for the District of Massachusettts issued a memorandum and order granting the Commission's motion for summary judgment and finding Hamburger violated Sections 10(b) and 15(a) of the Securities and Exchange Act of 1934 (the "Exchange Act") and Section 17(a) of the

Securities Act of 1933 (the "Securities Act"). *See id.*, ECF No. 151; *see also*, Harper Decl., Exhibit 1 (Summary Judgment Memorandum and Order), pp. 8-13, 16-18, 47-51, 56-63, and 70-74 (discussing Hamburger's violations). On the same date, the Court issued a final judgment permanently enjoining Hamburger from future violations of Sections 10(b) and 15(a) of the Exchange Act and Section 17(a) of the Securities Act. *See SEC v. Bio Defense Corp.*, 1:12-cv-11669-DPW (D. Mass.), ECF No. 155 (Final Judgment as to Defendant Brett Hamburger); *see also* Harper Decl., Exhibit 2 (Hamburger Final Judgment), Sections I through III (injunctive relief). Although Hamburger initially filed a notice to appeal the final judgment in the District Court action, the First Circuit Court of Appeals dismissed his appeal on June 30, 2020 for lack of prosecution. *SEC v. Bio Defense Corp.*, 1:12-cv-11669-DPW (D. Mass.), ECF No. 260 (USCA Judgment dismissing Hamburger appeal); Harper Decl., Exhibit 3 (copy of USCA Judgment). Based on the entry of the injunction, on January 15, 2020, the Commission issued an Order Instituting Administrative Proceedings pursuant to Section 15(b) of the Exchange Act (the "OIP"). Hamburger was provided service of the OIP over five months ago, on February 14, 2020, but he has not filed an answer. Accordingly, pursuant to Rules 155(a) and 220(f) of the Commission's Rules of Practice, the Division submits that default judgment is appropriate and sanctions should be imposed.

II. PROCEDURAL HISTORY OF ADMINISTRATIVE PROCEEDING

The Commission issued the OIP in this matter on January 15, 2020. The Division of Enforcement hired a process server who made effective service of the OIP on Hamburger's wife and co-resident, Christine Hamburger, at Hamburger's usual place of abode. *See* Harper Decl., Exhibit 4 (Affidavit of Service); *see also* Rule 141(a)(2)(i) (individual may be served by "leaving a copy at the indivudal's dwelling house or usual place of abode with some person of suitable age

and discretion then residing therein"). Pursuant to the Commission's Rules of Practice, Hamburger's answer to the OIP was due twenty days from service of the OIP. *See* Rule 220(b). However, as of the date of this Motion, he has not filed an answer. Nor has he otherwise defended this proceeding.

III. FACTUAL BACKGROUND

Because Hamburger has not timely answered, the Commission may deem true the allegations of the OIP. *See* Rule 155(a). Further, because Hamburger's liability for violating the securities laws has already been determined in a fully litigated Federal district court action, the Commission may rely on the factual and legal conclusions set forth in the District Court's summary judgment opinion. *See*, *e.g., Daniel Imperato*, Exchange Act Rel. No. 628, 2014 WL 3048126 (Jul. 7, 2014) (noting that "in assessing whether a bar is in the public interest, 'follow-on proceedings have long considered district court findings . . . . Courts have repeatedly approved this practice.'"); *Gann v. SEC*, 361 Fed.Appx. 556 (5th Cir. 2010) (in review of follow-on AP after fully litigated district court case, treating "the district court's findings of fact as conclusive and binding on the parties."); *Studer v. SEC*, 148 Fed.Appx. 58 (2d Cir. 2005) (noting that, in administrative proceeding, Respondent is "prohibited from relitigating the factual and legal conclusions of the district court regarding his violations of federal securities laws").

Between 1989 and 1997, Hamburger was a registered representative associated with various brokerage firms, but was barred by the NASD in October 2000 as a result of, among other things, acting as an unregistered broker. OIP, at II.A.1; *see also* Harper Decl., Ex. 5 (Certified FINRA CRD for Hamburger), pp. 13-16 (employment history), and pp. 36-37 (noting allegations and final bar sanction). In March 2003, Hamburger was convicted of conspiracy to commit securities fraud and sentenced to 5 years of probation and 10 months of home detention. *Id; see*

also Harper Decl., Ex. 1 (Memo. & Order) (noting Hamburger's criminal conviction and term of probation); *Id.*, Ex. 5 (Certified FINRA CRD for Hamburger), p. 38 (reporting details of conviction and sentence).

Beginning in approximately 2003, Hamburger served as a consultant to Bio Defense, a Delaware corporation with a principal place of business in Boston, Massachusetts. OIP, at II.A.1 Bio Defense's purported business was the development and sale of a machine that allegedly disinfected mail contaminated by bioterrorism pathogens. *Id.* Hamburger's role was to generate leads for prospective investors. Harper Dec., Exhibit 1 (Memo. & Order), p. 4. Starting in approximately August 2008 and continuing through October 2010, Hamburger organized and managed a scheme to defraud overseas investors, and acted as an unregistered broker, in the offer and sale of Bio Defense securities. *See* OIP, at II.A.1; Harper Decl., Ex. 1 (Memo. & Order), pp. 8-13 (explaining Hamburger's orchestration of overseas call centers from August 2008 through October 2010).[1] Specifically, Hamburger orchestrated and managed international boiler room call centers that solicited investors to purchase Bio Defense securities and then, unbeknownst to those investors, diverted 75 percent of every dollar raised to those call centers. Harper Decl., Ex. 1 (Memo. & Order), pp. 8-13. And, during the boiler room operations, Hamburger acted as an intermediary passing investor contact information from the call centers to Bio Defense, and charged Bio Defense a fee based on the dollar amount of investments received from the call center operations. *Id.*, pp. 8-13, 56-57.

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[1] The OIP states that Hamburger acted as a consultant and participated in the scheme to defraud through "at least April 2010." OIP, at II.A.1. While this language is technically correct and consistent with the allegations of the complaint (*see SEC v. Bio Defense Corp.*, 1:12-cv-11669-DPW (D. Mass.), ECF No. 1, ¶82), Hamburger's actual conduct and participation in the scheme to defraud continued for an additional six months until October 2010, as found by the District Court in ruling on summary judgment. *See* Harper Dec., Exhibit 1 (Memo. & Order), p. 13.

The specific details of Hamburger's participation in this boiler room scam are set forth in the District Court summary judgment opinion. Specifically, in August 2008, approximately five months after the end of his five-year term of probation from his previous securities fraud conviction, Hamburger entered into an agreement with Bio Defense to generate investor leads and raise money for Bio Defense overseas. Harper Decl., Ex. 1 (Memo. & Order), pp. 4, 8-12. Hamburger's agreement provided that he would introduce Bio Defense to sources of funding and would receive a fee of 12.5 percent for any financing arranged by any party introduced by him, in cash on a weekly basis. *Id.*, pp. 8-9. Around the same time, Hamburger introduced Bio Defense and its corporate officers to Agile, a company that proposed to raise investor money from Eurpoean investors in exchange for a fee of 75 percent of all money raised. *Id.*, pp. 8-11.

Hamburger met with Agile in Spain and learned about their call center operations. *Id.*, p. 9. He and an officer of Bio Defense worked together to prepare an investor solicitation packet, including a stock subscription agreement and payment instructions. *Id.*, pp. 9-10. Hamburger also provided Agile with a script to be used by telephone callers for soliciting prospective investors. *Id.*, p. 10. None of these documents disclosed that Agile would receive 75 percent of the funds invested. *Id.*

Once started, Agile callers contacted potential Bio Defense investors by phone and solicited them for offers to purchase Bio Defense stock. *Id.*, p. 10. When a potential investor made an offer, Agile would take the investor's information and offer details and email it to Hamburger. *Id.* Hamburger would then pass on this information to Bio Defense and request payment of his 12.5 percent commission. *Id.* Bio Defense would use the investor information to fill in the stock subscription agreement and mail it with the investor packet to the potential investor. *Id.* The investor would complete the enclosed subscription agreement, sign it, and return the signature page

with payment to the Bio Defense office in Massachusetts. *Id.*, pp. 10-11. Bio Defense would pay Agile 75 percent of the funds invested. *Id.*, p. 11. Bio Defense would then pay Hamburger his 12.5 percent commission from the remaining funds. *Id.* Unbeknown to the investor, after these commission payments, Bio Defense was left with just a fraction of the funds provided by the investor. *Id.* Through this boiler room operation, which ran from August 2008 through February 2009, Bio Defense received over $3 million in investor payments, of which Bio Defense paid $2.4 million to Agile and then paid Hamburger his fee of 12.5 percent. *Id.*, p. 12.

In December 2008, Hamburger started a second overseas boiler room operation in Portugal. *Id.*, p. 12. This project was operated in the same manner as the Agile operation, including the 75 percent fee, but used a different call center under a different name. *Id.* Hamburger personally invested in this project, loaning between $30,000 and $50,000 to start the call center operations. *Id.*, pp. 12-13. Through this boiler room operation, which ran from December 2008 through October 2010, Bio Defense received payments of over $3 million, of which it paid over $2 million to the overseas fundraisers and used the remaining amount to pay Hamburger's fee and other expenses. *Id.*, p. 13.

As noted by the District Court, Hamburger not only arranged and funded the call center operations, but was also well aware of the aggressive boiler room tactics being used by them. From September 2008 through August 2009, Bio Defense received numerous complaints from solicited investors reporting boiler room tactics. Harper Decl., Ex. 1 (Memo. & Order), pp. 16-17. Each of these complaints was forwarded to Hamburger. *Id.* In addition, in early 2009, Hamburger was advised that the Chairman of Bio Defense's advisory board also reported hearing about the aggressive marketing, cold-calling, and boiler room tactics used to sell Bio Defense securities. *Id.*,

pp. 17-18. Despite these warnings and complaints, Hamburger's call center operations continued until the end of the second call center project in October 2010. *Id.,* pp. 13, 17-18.

IV. ARGUMENT

Hamburger has not filed an answer to the Commission's OIP despite the passage of more than five months since receiving effective service. The Commission should find Hamburger in default and enter judgment accordingly. Futher, because Hamburger is a securities fraud recidivist who started an overseas boiler room scam mere months after finishing a term of probation for a criminal conviction for conspiracty to commit securities fraud, the Division submits that an industry-wide association bar is appropriate.

A. Entry of Default Judgment is Appropriate

Hamburger received service of the OIP in this matter on February 14, 2020. *See* Harper Decl., Ex. 4 (Affidavit of Service). His answer was, therefore, due on or before March 5, 2020, twenty days after service. *See* Rule 220(b); *see also* OIP, §IV ("IT IS FURTHER ORDERED THAT Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this order . . . ."). As of the date of this Motion, Hamburger has not filed an answer or otherwise defended this action. Harper Decl, ¶7.

Commission Rule of Practice 155(a) provides that "[a] party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails . . . [t]o answer, to respond to a dispositive motion within the time provided, or to otherwise defend the proceeding." Here, because Hamburger has failed to "answer . . . or otherwise defend the proceeding," the Division

submits that a default judgment should be entered against him, as is specifically contemplated by the Commission's Rules of Practice. *See* Rules 155(a) and 220(f).

B. An Industry-Wide Collateral Bar Against Hamburger is in the Public Interest.

Exchange Act Section 15(b)(6)(A)(iii) authorizes the Commission to impose an associational bar against a respondent if (i) the individual was associated with a broker-dealer at the time of the alleged misconduct, (ii) the individual has been the subject of an injunction against acting as a broker-dealer or engaging in any conduct in connection with the purchase or sale of a security, and (iii) the bar is in the public interest. *See* 15 U.S.C. § 78o(b)(6)(A)(iii). Here, Hamburger meets all the elements required for an associational bar.

First, for the purpose of Section 15(b), an "associated person" includes persons who act as an unregistered broker. *See Edward J. Driving Hawk*, 2010 WL 2685821, at *5 n.4 (Jul. 7, 2010), Notice of Finality, 2010 WL 3071381 (Aug. 5, 2010); *see also* 15 U.S.C. § 78c(a)(18) (defining an "associated person" of a broker-dealer to include any partner, employee, or person in direct or indirect control of a broker or dealer). And, as determined in the District Court summary judgment opinion, Hamburger acted as an unregistered broker in the offer and sale of Bio Defense securities. *See* Harper Decl., Ex. 1 (Memo & Opinion), pp. 56-58.

Second, as reflected in the final judgment entered against Hamburger, the District Court has enjoined him from acting as an unregistered broker-dealer, in violation of Exchange Act Section 15(a), and from engaging in any further fraudulent conduct in connection with the offer, purchase or sale of securities, in violation of Section 10(b) of the Exchange Act or Section 17(a) of the Securities Act. *See* Harper Decl., Ex. 2 (Final Judgment as to Hamburger).

Third, there is no doubt that barring Hamburger is in the public interest. To determine whether an administrative remedy is in the public interest, the Commission considers the following factors:

> 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.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981) (quoting *SEC v. Blatt*, 583 F.2d 1325 at 1334 n.29 (5th Cir. 1978)). Here, these factors weigh heavily in favor of an associational bar. Hamburger's conduct was egregious. He introduced Bio Defense and its officers to the overseas boiler room operators. Harper Decl., Ex. 1 (Memo. & Order), p. 9. After that introduction, he participated in the creation of the offering materials and provided a script to the overseas call centers. *Id.*, pp. 9-10. He even loaned his own money to start the second operation. *Id.*, pp. 12-13. Moreover, Hamburger undertook his leadership role in August 2008, just five months after completing his five-year term of probation imposed for his criminal conviction for conspiracy to commit securities fraud. *Id.*, p. 4; *see also* Harper Decl., Ex. 5 (Certified FINRA CRD for Hamburger), p. 38 (reporting details of conviction and sentence). Further, Hamburger's 2003 criminal conviction occured just three years after the NASD barred him in 2000 for acting as an unregistered broker. *See* Harper Decl., Ex. 5 (Certified FINRA CRD for Hamburger), pp. 36-37 (noting FINRA allegations and final bar sanction). Hamburger's violations were recurrent. He ran two boiler room call center operations, which spanned from August 2008 through October 2010. Harper Decl., Ex. 1 (Memo. & Order), pp. 8-13. Hamburger also acted with a high degree of scienter. The summary judgment record shows that he was repeatedly advised of the aggressive marketing, high-pressure sales pitches and other boiler room tactics used by the call

centers, but he continued the solicitation operations. *Id.,* pp. 13, 16-18. Finally, as Hamburger has not answered the OIP, he has not provided any recognition of the wrongfulness of his conduct or any assurances against future violations. In light of these undisputed factors, the Dvision submits that, pursuant to Exchange Act Section 15(b), it is in the public interest that the Commission enter an associational bar against Hamburger.

Finally, the scope of the associational bar against Hamburger should be the broad, industry-wide bar authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act., Pub. L. No. 111-203, 123 Stat. 1376 (2010). The Dodd-Frank law amended Exchange Act Section 15(b)(6) to "expand[] the categories of associational bars, allowing the Commission to impose a broad collateral bar on participation throughout the securities industry." *Vladimir Boris Bugarksi*, Exchange Act Rel. No. 66842, 2012 WL 1377357, *3 n.11 (Apr. 20, 2012). The amendments expanding the scope of the associational bar became effective July 21, 2010. *George Charles Cody Price*, Advisers Act Release No. 4631, 2017 WL 405511, at *3 n.14 (Jan. 30, 2017). Where a Respondent's misconduct occurs before and after the effective data of the Dodd-Frank amendements, the Commission has upheld the imposition of a broad collateral bar as long as the violative conduct after July 21, 2010 supports an industry-wide bar. *See, e.g., George Charles Cody Price*, 2017 WL 405511, at *3 n.14 (Jan. 30, 2017); *Vladimir Boris Bugarksi*, 2012 WL 1377357, at *3 & n.11. Here, Hamburger's operation and management of the overseas boiler room scam began in August 2008 and continued through October 2010. Harper Decl., Ex. 1 (Memo. & Order), pp. 8-13. As Hamburger's egregious misconduct continued for approximately three months after the effective date of Dodd-Frank's amendments, it amply supports an industry-wide bar, particularly in light of his status as an unrepentant recidivist.

V. CONCLUSION

For the reasons set forth above, the Division requests that the Commission find Hamburger in default and impose an industry-wide associational bar as authorized by Exchange Act Section 15(b)(6).

Respectfully submitted,

/s/Richard M. Harper II
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Certificate of Complaince with Rule 154(c)

I hereby certifiy that the foregoing brief is fewer than fifteen (15) pages and that the Division has, therefore, complied with Rule 154(c) of the Commission Rules of Practice.

/s/Richard M. Harper II
Counsel for the Division of Enforcement

Certificate of Service

I, Richard Harper, hereby certify that on August 7, 2020, I caused a true copy of the foregoing document to be served by regular mail upon Brett Hamburger at [redacted], [redacted] Boca Raton, Florida [redacted].

/s/Richard M. Harper II
Counsel for the Division of Enforcement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19663

In the Matter of

BRETT HAMBURGER,

Respondent.

DECLARATION OF RICHARD HARPER

Richard Harper, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a Senior Trial Counsel with the U.S. Securities and Exchange Commission's Division of Enforcement ("Division"). I am counsel for the Division in the above-captioned administrative proceeding. I submit this Declaration in support of the Division's Motion for Default Judgment and Imposition of Sanctions.

2. On September 6, 2019, the United States District Court for the District of Massachusetts granted the Commission's motion for summary judgment against Respondent Brett Hamburger in the case *SEC v. Bio Defense Corporation, et al.*, 1:12-cv-11669-DPW (D. Mass.). A copy of the District Court's memorandum and order is attached hereto as Exhibit 1.

3. On September 6, 2019, the District Court also entered a final judgment against Respondent Hamburger that, among other things, permanently enjoined him from future violations of Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 and Section 17(a) of the Securities Act of 1933. A copy of this final judgment is attached hereto as Exhibit 2.

4. On October 11, 2019, Respondent Hamburger filed a notice of appeal from the final judgment entered in the District Court. *See SEC v. Bio Defense Corporation, et al.*, 1:12-cv-11669-DPW (D. Mass.), ECF No. 175. On June 30, 2020, the United States Court of Appeals for the First Circuit entered an order dismissing Respondent Hamburger's appeal for lack of prosecution. A copy of this order is attached hereto as Exihibit 3.

5. On January 15, 2020, the Commission issued an Order Instituting Administrative Proceedings pursuant to Section 15(b) of the Exchange Act, which instituted this proceeding against Respondent Hamburger (the "OIP").

6. On Februrary 14, 2020, a process server made effective service of the OIP on Hamburger's wife and co-resident, Christine Hamburger, at Hamburger's usual place of abode. A copy of the process server's declaration of service is attached hereto as Exhibit 4.

7. Since service of the OIP, Respondent Hamburger has not filed an answer or otherwise defended this proceeding.

8. Attached as Exhibit 5 to this declaration is a certified copy of the Central Registration Depository ("CRD") record relating to Respondent Hamburger, which is prepared, kept and maintained by the Financial Industry Regulatory Authority ("FINRA") in the ordinary course of its business.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 7, 2020

/s/Richard M. Harper II

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Certificate of Service

I, Richard Harper, hereby certify that on August 7, 2020, I caused a true copy of the foregoing document to be served by regular mail upon Brett Hamburger at [redacted], [redacted], Boca Raton, Florida [redacted].

Richard M. Harper II
Counsel for the Division of Enforcement

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BIO DEFENSE CORPORATION; MICHAEL LU, individually and doing business as MAY'S INTERNATIONAL CORPORATION; JONATHAN MORRONE, individually and doing business as JM INTERNATIONAL, INC.; Z. PAUL JURBERG, individually and doing business as BROOKLINE CAPITAL PARTNERS, INC.; BRETT HAMBURGER, individually and doing business as JCBH CONSULTING, LLC; ANTHONY ORTH, individually and doing business as GRAND TRAVERSE EQUITIES, INC. Defendants, and MAY'S INTERNATIONAL CORPORATION, Relief Defendant.	CIVIL ACTION NO. 12-11669-DPW

MEMORANDUM AND ORDER
September 6, 2019

This securities enforcement action was brought by the Securities and Exchange Commission ("SEC") against Bio Defense Corporation and several individuals who were employed as consultants — some holding official capacities — with Bio

Defense. It arises out of conduct in connection with the offering and sale of unregistered Bio Defense securities over a seven-year period. Defaults[1] have entered against: Bio Defense; its former Chief Executive Officer, Michael Lu; and relief defendant, May's International Corporation, through which Lu was compensated for his work at Bio Defense.

The SEC has moved for summary judgment on all counts as to the remaining defendants: Jonathan Morrone, Z. Paul Jurberg, Anthony Orth, and Brett Hamburger. For his part, Jurberg presses a cross-motion for summary judgment.

Following hearings on these motions and detailed consideration of the extensive record, I now grant summary judgment for the SEC as to various accounts against the remaining defendants and will deny Jurberg's cross-motion. Since the hearing, the SEC has filed a motion for entry of

[1] On April 17, 2013, I granted SEC's motion for entry of default under Fed. R. Civ. P. 55(a)as to Bio Defense for failure to plead or otherwise defend. Similarly, on December 4, 2014, I granted the SEC's motion for entry of default as to Lu and May's International. I declined to entertain entry of final default judgment against the defaulted defendants pending consideration of the entire record in light of summary judgment practice involving the remaining defendants. Final-default-judgments against Bio Defense, Lu, and May's International will be entered contemporaneously with the docketing of this Memorandum and Order and judgments regarding the remaining defendants, upon the submission of proposed judgments by the SEC, which I treat as meeting the requirements of Fed. R. Civ. P. 55(b)(2) that a party seeking such a judgment must apply to the court for a default judgment.

default and a proposed draft default judgment as to Orth. I will now enter the default and treating the plaintiff's proposed default judgment as an application in accordance with Fed. R. Civ. P. 55(b)(2), the default as to Orth, together with the default judgment against him, will enter in final form.

I. BACKGROUND

A. Factual Background

1. The Defendants

Bio Defense was a Delaware corporation with its principal place of business from 2002 and through 2010 in Massachusetts. It ceased operations in 2013. The company was founded in October 2001 by **Michael Lu**, who, following the attacks on the World Trade Center on September 11, 2001, and the widely publicized anthrax attacks thereafter, envisioned the development of a machine that could disinfect mail containing bioterrorism agents. The primary business of Bio Defense was the development and sale of that machine, the 'Mail Defender.' Lu resigned as Chief Executive Officer of Bio Defense in July 2011.

Jonathan Morrone and **Z. Paul Jurberg** joined the company in 2002. As of 2008, Morrone served as executive vice president of finance and administration, and Jurberg served as senior vice president of consumer and investor relations. Both Morrone and Jurberg had prior securities experience and were responsible for

raising capital for Bio Defense. **Anthony Orth** joined Bio Defense in 2005 or 2006 in a sales and marketing capacity, eventually earning the title of vice president. **Brett Hamburger** became involved with Bio Defense in 2002 or 2003 as a consultant tasked with generating leads for prospective investors. Like Morrone and Jurberg, Hamburger had significant prior securities and stockbroker experience. In 2003, Hamburger was convicted of conspiracy to commit securities fraud in a separate setting, and he completed his probation for that charge in March 2008.

Instead of receiving salaries, all of the individual defendants received transaction-based compensation or commissions — linked to a certain percentage of the investment money the company received — paid to each defendant's independent consulting company upon the defendants' submissions of invoices for payment to Bio Defense.[2] At no relevant time had any of the defendants, their independent consulting companies, or the partners they worked with for overseas investor development (Agile Consulting, Mute & Reboot, RULUSO, Red Enterprises, M Management, Ornaham Development, and Conyers

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[2] Lu's company, a separate defendant in this action, was May's International Corporation. Morrone's consulting company was JM International, Inc.. Jurberg's company was Brookline Capital Partners, Inc. ("BCP"), Orth's company was Grand Traverse Equities, Inc., and Hamburger's company was JCBH Consulting, LLC (also sometimes referenced to as JCB Consulting, LLC).

Consulting) registered with the SEC, as brokers or dealers, or registered the Bio Defense securities with the SEC.

During the relevant time period (from 2004 through 2010), Bio Defense did not earn a profit. It sold approximately ten machines, generating total sales revenue of approximately $430,000. The vast majority of its funding came from private investors, who over the course of this period invested approximately $26 million in Bio Defense. Despite this fundraising, the company suffered losses over $2 million each year. Even so, throughout their relationship with Bio Defense, the individual defendants received significant payments based on their fee arrangements with the company. Morrone’s consulting company received approximately $1,313,158 in consulting fees from Bio Defense from 2004 through 2010. Jurberg’s consulting company received approximately $1,188,161 during the same period. For work managing the overseas fundraising projects from 2008 through 2010, Orth’s consulting company received $407,041, and Hamburger received $357,360. These payments were made after payments were made to the companies running the overseas fundraising projects, and before any payments were made for business expenses such as rent and utilities, product development, or Bio Defense employee salaries.

2. 2004- Early 2008: Bio Defense's Domestic Solicitation and Stock Sales

From 2004 through 2007, Morrone and Jurberg engaged directly with potential investors to encourage investment in Bio Defense stock, which was not registered with the SEC. They did so through phone calls, presentations at investor conferences held in Syracuse, New York in April, May, and October 2004, and investor conference calls. From December 2007 to February 2008, Jurberg also assisted investors in rolling over individual retirement accounts to other types of accounts so that they could purchase Bio Defense stock. Individual investors purchased stock in Bio Defense by completing a stock subscription agreement, returning the agreement to Bio Defense with payment, and receiving a stock certificate from the company.

In encouraging investment in Bio Defense, Morrone and Jurberg informed investors that they did not earn salaries and were instead compensated in "sweat equity," meaning that they were compensated through stock in the company. They told investors that there was a limited opportunity to buy into the company while shares still afforded great value. Morrone and Jurberg, however, received compensation throughout their relationship with Bio Defense based on the invoices they prepared listing investors whom they had solicited. By

September 30, 2004, Morrone had already received $140,000 in consulting fees, and Jurberg had received over $99,000 in fees.

Beginning in 2004, Orth also engaged in the offer and sale of Bio Defense stock by cold-calling (or overseeing others who would cold-call) potential investors and telling them that the value of the stock would increase within a few months. In 2007, Bio Defense started a cold calling center at its offices in Boston. The call center had as many as ten callers, and Orth oversaw the call center's operation. As with Morrone and Jurberg, Orth received compensation tied to the number and amount of investments received.

These solicitation efforts resulted in purchases of Bio Defense shares for $10,000 by Michael Woodward (and his wife) in 2004, $10,000 by Peter and Brenda Antonowicz in 2004, $30,000 by Joseph Catalani in 2004 and 2007, and many others.

On October 3, 2007, Morrone, Jurberg, and Orth participated in an investor conference call in which they continued to encourage investment in the company, discussing the company's prospects for success and their potential government contracts, and stating that the company planned to go public in 18 to 24 months. Sara Scribner, an enforcement attorney at the Texas State Securities Board ("Board"), received cold-calls encouraging her to buy Bio Defense stock, and was invited to participate in this conference call.

In March 2008, following Scribner's report regarding the conference call to the Board, Bio Defense, Lu, Morrone, and Jurberg agreed to the imposition of a cease-and-desist order from the Board requiring them to stop offering or selling Bio Defense stock in Texas because those securities were unregistered.

In 2008, the Commonwealth of Massachusetts began an investigation into Bio Defense's sale of securities in Massachusetts without proper registration. While this investigation was underway, Bio Defense decided that it would no longer solicit private investors in the United States for stock purchases. Instead, it turned its sights abroad.

3. 2008-2010: The Overseas Financing Projects

Beginning in 2008, Bio Defense, through Hamburger and Orth, undertook a number of overseas investor solicitation efforts. These are referred to as the EU, PT, CA, and GH projects, but all involved proactive outreach to prospective investors through call centers operated by third-party companies in foreign countries.

a. The EU and PT Projects

In August 2008, Bio Defense entered into an agreement with Hamburger, through his consulting company, to generate investor leads and raise money for Bio Defense overseas. Hamburger had served as an advisor to Bio Defense since 2003, and, although he

had agreed in a previous consulting agreement to "use his best efforts to introduce the Corporation to potential investors" to secure equity funding, he had not been successful in doing so. Hamburger's 2008 agreement provided that he would introduce Bio Defense "to certain potential sources of funding" and would receive a fee of 12.5% for "any financing made or arranged by any party introduced by the consultant" in cash on a weekly basis.

i. The EU Project

In 2008, Hamburger learned about a company called Agile Consulting ("Agile") that could raise investor money quickly in Europe. He informed Lu, Morrone, and Jurberg[3] that Agile would charge a 75% fee for money raised. This was a fee of a magnitude Hamburger had not encountered before. He then proceeded to meet with Agile in Spain and learn about their call center operations. In July 2008, Bio Defense began working with Agile through Hamburger in what became known as the "EU project." The business alliance agreement between Bio Defense and Agile did not indicate that Agile would collect a fee of 75% of the funds solicited.

Both Morrone and Jurberg were involved in the initial preparations to begin Agile's work on behalf of Bio Defense.

[3] As discussed *infra*, Jurberg denies that he had knowledge of this exorbitant fee.

Jurberg sent Hamburger a script to be used by telephone callers to solicit prospective investors, which Hamburger then shared with Agile. Morrone and Hamburger worked together to prepare an investor packet that included an introductory letter from Morrone to prospective investors, a stock subscription agreement, and a copy of Bio Defense's payment instructions. None of these documents disclosed that Agile would receive 75% of the funds invested.

The investor solicitation process worked as follows: Agile callers contacted potential Bio Defense investors by phone and solicited them for offers to purchase Bio Defense stock.[4] When a potential investor made an offer, Agile would take the investor's information and offer details and email it to Hamburger. Hamburger would then pass on this information to Bio Defense and request payment of his 12.5% commission. Morrone or Jurberg at Bio Defense would use the investor information to fill in a draft stock subscription agreement and would then mail or email the investor packet, described above, to the potential investor. The investor would complete the enclosed subscription

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[4] Agile used a number of business names in conducting its operations. When Agile callers cold-called prospective investors, they introduced themselves as working for companies such as Henley Trading, Henley Consulting, Securities Associates Group, Zurich Capital Group, and Britannia Swiss Equities. Agile billed Bio Defense, however, in its own name. Hamburger was aware of these business name discrepancies but did not keep track of them.

agreement, sign it, and return the signature page with payment to the Bio Defense office in Massachusetts, as instructed in the paperwork, usually to the attention of Morrone or Jurberg.

When either Morrone or Jurberg received the completed agreement, they would bring it to Lu for his counter-signature and would then ship the stock certificate to the investor. Agile would invoice Bio Defense, and Bio Defense would pay Agile 75% of the funds invested. Bio Defense would then pay Hamburger his 12.5% commission from the remaining funds. Unbeknown to the investor, after these commission payments, Bio Defense was left with just a fraction of the funds provided by the investor.

Throughout the EU project, Hamburger remained the primary point of contact between Agile and Bio Defense, visiting the call centers and serving as the intermediary between the two companies. Morrone was designated as the point of contact at Bio Defense for Hamburger, but generally left Hamburger to his own devices. Morrone assigned his [redacted], to work closely with Hamburger in liaising between Agile and Bio Defense.[5] At times, [redacted] filled the role that Morrone or Jurberg did in preparing and mailing out the stock subscription agreements. When [redacted] stopped working

[5] [redacted] submitted invoices for the work she did to Bio Defense, and either Morrone or Jurberg paid her through their own consulting companies and sought reimbursement for their payments from Bio Defense as a business expense.

for Bio Defense in August 2009, Jurberg took over her responsibilities of mailing out investor packets, tracking the receipt of new stock subscriptions from the overseas call centers, and coordinating the issuance of stock certificates to new investors, as directed by Hamburger. Throughout the EU project, which ran from August 2008 through February 2009, Bio Defense received investor payments of $3,347,014 into a bank account located in the United States and paid Agile, into an account located in Cyprus, $2,460,930 of that amount. After paying Agile, Bio Defense paid Hamburger his 12.5% fee as well.

ii. The PT Project

In approximately December 2008, Hamburger started a second overseas project in Portugal, referred to as the "PT project." This project was to be operated in much the same way as the EU project, including the 75% fee, but used a different call center company, initially called Mute & Reboot and later known as RULUSO and Red Enterprise.[6] As with the EU project, Hamburger provided oversight, visiting the call center in Portugal on several occasions, and served as the intermediary between Mute & Reboot and Bio Defense. Hamburger [redacted] [redacted] to Mute & Reboot to

[6] As with Agile, Mute & Reboot and its successors solicited investors using a variety of assumed names, including Securities Associates Group and Britannia Swiss Equities, but invoiced Bio Defense in the names Moot & Reboot, RULUSO and Red Enterprise.

start the call center. ██████████ also assisted Hamburger with this operation. Through the PT project, which ran from December 2008 until October 2010, Bio Defense received investor payments of $3,336,701,[7] and paid the overseas fundraisers (Mute & Reboot and its successors) $2,065,827 of that amount into accounts located in Tanzania, Portugal, and Cyprus. After paying the overseas fundraisers, Bio Defense also paid Hamburger's fee, ██████████ invoices, and other expenses.

b. The CA and GH Projects

While the PT project was still ongoing, Orth began to run two additional overseas financing projects, referred to as "the CA and GH projects." These projects operated in a manner similar to the EU and PT projects; they enlisted overseas cold-call centers to solicit potential investors, whose information was then provided to Morrone and Jurberg at Bio Defense, through Orth, for preparation and mailing of the subscription packet. Indeed, some of the same call centers used in the PT project were employed for these endeavors, and the same correspondence process was utilized. As with the EU and PT projects, the

[7] Bio Defense received these funds in a number of U.S. bank accounts. Banks would periodically freeze Bio Defense's accounts because of the volume of money transferred from outside the United States, and Bio Defense would simply open a new account at a different bank.

investor packet materials did not disclose the exorbitant fees collected by the call centers.

The CA project ran from approximately March 2009 to July 2010 and utilized the fundraising services of M Management and Ornaham Development. During this project, Bio Defense received investor payments of $5,073,393 in bank accounts in London and the United States and paid $2,636,769 of this amount to the overseas fundraisers.

The GH project ran from approximately April 2010 to September 2010 and utilized the fundraising services of Conyers Consulting and Red Enterprise. During this project, Bio Defense received investor payments of $117,954 and paid $108,740 of the investor payments to the overseas fundraisers.

For his work managing these projects, Orth received a commission of 15% of the net investor proceeds for both projects after the overseas fundraisers were paid their commission fees. In managing these projects, Orth was aware of the aggressive tactics being employed by the call centers. As Orth's managers, Morrone and Jurberg also knew about, or at least had responsibility for, the operations of these projects.

4. 2008-2010: The Machine Sales Buy-Back Program

In addition to managing two overseas operations, Orth managed the Bio Defense machine sales buy-back program. This program offered investors the opportunity to invest $50,000 in

an individual Mail Defender machine. When the machine was sold, the investor would receive the $50,000 he or she invested, as well as a $10,000 return. The investor would not, however, have any input in or control over how, when, or even whether the machine was sold. Orth earned a commission on any investments he obtained through this program.

Orth was successful in pitching this investment to two investors: Colin Firbank and Joseph Catalani. To obtain Catalani's investment, Orth misrepresented the company's past and future sales of the Mail Defender machine. Specifically, he told Catalani that the machines sold for over $300,000, that the company had already sold 175 machines and had orders for thousands more, and that the machines had already been sold to mail service providers such as the United States Postal Service, UPS, and Federal Express. Orth also represented that Catalani could purchase a specific machine that had already been sold to Morgan Stanley, and therefore could receive a speedy return on his investment, which was of great importance to Catalani. Bio Defense, however, never sold more than approximately ten machines, it had never sold one to Morgan Stanley, and it had no pending purchase orders in place. Relying on Orth's representations, Catalani invested in the buy-back program.

5. Complaints and Feedback from Investors and Advisors

a. Warnings from Outside Counsel

On August 6, 2008, the day after Morrone faxed Hamburger a signed copy of the business alliance agreement with Agile for the first overseas fundraising project (the EU project), Lu, Morrone, and Jurberg met with Bio Defense's outside counsel, Barbara Jones, to discuss the relationship with Agile. Jones told them that a 75% fee was "completely unheard of," "exorbitantly high" and something "no legitimate, professional consulting group would charge," and strongly advised that Bio Defense not use Agile's services to solicit investors. Nonetheless, Bio Defense, with the help of Hamburger, proceeded with Agile. If Morrone or Jurberg had somehow previously been unaware that Agile sought such a high fee for its services, they certainly knew after this meeting. Despite the lack of mention of the fee in the business alliance agreement, Bio Defense proceeded to pay Agile its fee based on the amount of investor money received. Morrone received weekly reports from David Chen, Bio Defense's controller, reflecting these fees, which immediately began to exceed $260,000 per week.

b. Complaints from Investors

From September 2008 through August 2009, Bio Defense received numerous complaints from solicited investors reporting boiler-room tactics and concerns about the viability of the

investment. Morrone received complaints from two investors, which he forwarded to Hamburger. Orth received complaints from three investors, including a complaint filed with the City of London police department by one of these investors, reporting "Henley Consulting" (a name Agile used when speaking with potential investors) as a "boiler room scam." Orth forwarded these complaints to Morrone and Jurberg, who forwarded them to Hamburger.

During the SEC investigation that led to this enforcement action, several of the investors who were solicited by the overseas call centers reported issues, including repeated and aggressive sales calls. In these calls, they were promised quick and profitable returns and told that the shares were in short supply. The resources the potential investors were given to do further research into the company, such as phone numbers and a website, worked during the solicitation but were not available months later, when individuals who had opted to invest in Bio Defense stock were looking for an opportunity to sell the stock in the absence of the public offering that had been promised.

c. *Warnings from Lord Guthrie*

Morrone also received warnings in early 2009 from Lord Charles Guthrie, chairman of Bio Defense's advisory board. Guthrie informed Morrone that he had heard about the aggressive

marketing, cold-calling, and boiler-room tactics used to sell Bio Defense stock through the overseas call centers, and expressed great concern about these operations. Morrone forwarded these warnings to Hamburger. Despite receiving this feedback, Bio Defense and its affiliates continued to operate the overseas call centers and the machine sales buy-back investment program.

B. Procedural History

The SEC filed its eight-count complaint on September 10, 2012, against Hamburger, Lu, Orth, Morrone, Jurberg, Bio Defense, and May's International, asserting the violation of numerous provisions of the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act"). The SEC seeks a permanent injunction, disgorgement of ill-gotten gains, civil monetary penalties under § 20(d) of the Securities Act and § 21(d)(3) of the Exchange Act, and an order that Morrone, Jurberg, Lu, and Orth be prohibited from acting as officers or directors of any public company, pursuant to § 20(e) of the Securities Act and § 21(d)(2) of the Exchange Act.

Orth, Morrone, Jurberg, and, Bio Defense, through its Chief Executive Officer and Chairman David Smith, answered the complaint in October 2012.[8] Hamburger answered the complaint in

[8] Morrone and Jurberg are represented by the same counsel. Orth consulted with an attorney and was represented at his

November of that year. Lu and May's International did not respond at all. On January 29, 2013, following a hearing, I granted the SEC's motion to strike the answer of Bio Defense because Smith was not a member of the bar and therefore could not file an answer on behalf of the corporation. In addition, I recognized the possibility of default of Bio Defense, Lu, and May's International, and set a schedule for fact discovery and summary judgment motions.

On April 17, 2013, I granted the SEC's motion for entry of default as to Bio Defense for failure to plead or otherwise defend under Fed. R. Civ. P. 55(a).[9] The case proceeded with discovery, encountering some issues with Jurberg's competency to be deposed and Hamburger's access to the discovery materials.

On September 29, 2014, Hamburger filed a third-party complaint against Bio Defense, Michael Lu, David Smith, and ONEighty C Technologies Corporation claiming that they should pay for all of his damages, should he be found liable.

On December 4, 2014, following a hearing, I granted the SEC's motion for entry of default as to Lu and May's

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deposition, but no notice of appearance has been filed as to his representation in this proceeding. All other defendants are self-represented.

[9] On April 2, 2013, Smith filed a letter with the Delaware Department of State resigning as Chairman and Chief Executive Officer of Bio Defense and informing the agency that the corporation had ceased the active conduct of its business effective March 18, 2013.

International. I also denied without prejudice the SEC’s motion to strike Jurberg’s motion to dismiss, and denied without prejudice Jurberg’s motion to dismiss, subject to the issues being considered in summary judgment practice. At that time, the SEC’s motions for summary judgment — one against Hamburger and one against Morrone, Jurberg, and Orth — had already been filed, as had the defendants’ oppositions to those motions — aside from Orth, who has not responded — and Jurberg’s cross-motion for summary judgment.

On October 8, 2014, the SEC moved to strike Hamburger’s third-party complaint. On January 16, 2015, Smith separately moved to strike Hamburger’s third-party complaint. Hamburger opposed both motions. On March 5, 2015, ONEighty C Technologies Corporation, the other subject of the Hamburger third-party complaint, moved to dismiss Hamburger’s third-party complaint. Soon thereafter, on March 18, 2015, following a hearing, I granted all three motions, construing the motion to dismiss as a motion to strike.

On April 2, 2015, the SEC filed a motion for entry of default as to Orth, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

On November 22, 2017, Hamburger filed a *pro se* motion to dismiss the case.

On May 31, 2018, Jurberg filed a *pro se* motion to dismiss.

The motions for summary judgment and the motions to dismiss filed by Hamburger and Jurberg are the subjects of this Memorandum and Order.[10] The relevant final judgment against all defendants will be issued contemporaneously with this order following consideration of the forms of judgment proposed by the Plaintiff.

II. MOTIONS FOR SUMMARY JUDGMENT

A. *Standard of Review*

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A "genuine" dispute is one that, based on the evidentiary material, "a reasonable jury could resolve . . . in favor of the non-moving party," and a "material" fact is one that has "the potential to affect the outcome of the suit under the applicable law." *Sanchez* v. *Alvarado*, 101 F.3d 223, 227 (1st Cir. 1996) (citations and quotation marks omitted).

[10] Because the motions to dismiss contain no new or different legal arguments, I address them within my discussion of the motions for summary judgment. Hamburger's motion is a reiteration of jurisdictional arguments fully briefed on summary judgment. Jurberg's motion is grounded in facts adduced during summary judgment, and raises no new arguments, merely repeating his contention that he lacked scienter. He also requests "compassionate" consideration. I note that neither motion was timely filed, *see* Fed. R. Civ. P. 12, and that both rely on facts and evidence outside the four corners of the complaint. They are thus appropriate for summary judgment analysis.

When reviewing a motion for summary judgment, I view the facts "in the light most favorable to the non-moving party." *Zambrana-Marrero* v. *Suarez-Cruz*, 172 F.3d 122, 125 (1st Cir. 1999). If the moving party satisfies the burden of showing, based on evidentiary material, that there is no genuine issue of material fact, the burden shifts to the nonmoving party to demonstrate by reference to other evidentiary material "that a reasonable jury could return a verdict for the nonmoving party." *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[C]onclusory allegations, improbable inferences, and unsupported speculation" are insufficient to establish a genuine dispute of fact. *Medina-Munoz* v. *R.J. Reynolds Tobacco Co.*, 896 F.2d 5, 8 (1st Cir. 1990).

Where there are cross-motions for summary judgment, I consider each motion "on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the Rule 56 standard." *Bienkowski* v. *Northeastern Univ.*, 285 F.3d 138, 140 (1st Cir. 2002) (citation and internal quotation marks omitted); *see Mandel* v. *Boston Phoenix, Inc.*, 456 F.3d 198, 205 (1st Cir. 2006). Summary judgment is appropriate if "either of the parties deserves judgment as a matter of law on facts that are not disputed." *Adria Int'l Group, Inc.* v. *Ferré Dev., Inc.*, 241 F.3d 103, 107 (1st Cir. 2001).

B. Evidentiary Issues

I consider at the outset two evidentiary issues arising from the defendants' limited responses.

1. Invocation of Fifth Amendment Privilege

In their depositions, Jurberg and Orth invoked the Fifth Amendment privilege against self-incrimination and declined to answer the questions posed to them by the SEC. The SEC asks first that an adverse inference be drawn against both defendants, and second that these defendants not be permitted to submit evidence in opposition to the motion for summary judgment.

An adverse inference may be drawn in a civil matter from a party's assertion of his Fifth Amendment privilege; however, that inference must be supported by some independent, probative evidence. *See Baxter* v. *Palmigiano*, 425 U.S. 308, 317-18(1976); *SEC* v. *Druffner*, 517 F. Supp. 2d 502, 510-11 (D. Mass. 2007). *But see SEC* v. *Martino*, 255 F. Supp. 2d 268, 283-84 (S.D.N.Y. 2003) (drawing negative inference from defendant's assertion of Fifth Amendment privilege without requiring independent evidence of allegations, because SEC was "denied discovery based upon" assertion), *remanded*, 94 F. App'x 871 (2d Cir. 2004).[11] However, "even when permitted at the summary judgment stage, an adverse

[11] This case was remanded due to the death of defendant Martino during the course of the appellate proceedings.

inference, standing alone, is not sufficiently conclusive evidence to satisfy a moving party's burden." *Unum Grp.* v. *Benefit P'ship, Inc.*, 938 F. Supp. 2d 177, 184 (D. Mass. 2013) (citing *LaSalle Bank Lake View* v. *Seguban*, 54 F.3d 387, 389-94 (7th Cir. 1995)). This is because, as a constitutional matter, silence cannot be given any "more evidentiary value than [is] warranted by the facts surrounding [the] case." *Baxter*, 425 U.S. at 318; *see Lefkowitz* v. *Cunningham*, 431 U.S. 801, 808 n.5 (1977). Accordingly, to the extent there is other evidence to support the adverse inferences the SEC requests, I will draw them.

The SEC also asks that I prohibit Jurberg and Orth from submitting any evidence in opposition to the summary judgment motion because they have been uncooperative in discovery. Neither defendant has offered any evidentiary material in opposition. Jurberg's memorandum cites only those materials provided by the SEC, and Orth, as discussed below, has not responded at all to the motion. Accordingly, a preclusion order, as the SEC seems to request, is moot. I only pause here to note my reservations concerning such a sanction, particularly where adverse inferences, properly supported, would appear to be an adequate means of addressing a refusal to testify in a civil proceeding.

2. Admissions Through Failure to Oppose

Under Local Rule 56.1, "[m]aterial facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties." Other than those facts that are specifically opposed by Morrone, Jurberg, and Hamburger,[12] I will consider all facts stated by the SEC – if supported by the record – to be admitted and undisputed. *See Cochran* v. *Quest Software, Inc.*, 328 F.3d 1, 12 (1st Cir. 2003) (fact asserted in statement of undisputed material facts in support of summary judgment motion, pursuant to Local Rule 56.1, deemed admitted where non-moving party did not contest it in its opposition).

One defendant, Orth, has not filed any response to the motion for summary judgment against him. Even where a party does not oppose a motion for summary judgment, I may not enter summary judgment in favor of the moving party unless I am satisfied that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.

[12] The SEC argues that Jurberg did not submit a statement of material facts accompanying his cross-motion for summary judgment, as required by Local Rule 56.1. Given his *pro se* status, I will consider Jurberg to have satisfied this requirement with the section in his memorandum titled "counter statement of facts," which also supports his opposition to the SEC's motion for summary judgment against him.

This has been made clear by recent amendments to Fed. R. Civ. P. 56(e) removing any suggestion of a movant's entitlement to summary judgment simply because the motion was unopposed or inadequately opposed.[13] Thus, while all facts as articulated by the SEC in its statement of material facts and as supported by the record it has produced will be credited, the SEC is not

[13] Prior to 2007, Rule 56(e) provided that if the adverse party did not respond, as directed by the rule, by providing "specific facts showing that there is a genuine issue for trial," "summary judgment, if appropriate, shall be entered against the adverse party." *See De La Vega* v. *San Juan Star, Inc.*, 377 F.3d 111, 115 (1st Cir. 2004) (quoting Fed. R. Civ. P. 56(e) (1987)). In interpreting this rule, the First Circuit foreclosed the possibility of automatic entitlement to summary judgment in the absence of a response from the non-moving party, stating that even in such circumstances the district court "must review the motion and the supporting papers" and "inquire whether the moving party has met its burden to demonstrate undisputed facts entitling it to summary judgment as a matter of law." *Id.* at 115-16 (quoting *Jaroma* v. *Massey*, 873 F.2d 17, 20 (1st Cir. 1989) (per curiam)).

In 2007, Rule 56(e) was amended to change "shall" to "should," recognizing that "although there is no discretion to enter summary judgment when there is a genuine issue as to any material fact, there is discretion to deny summary judgment when it appears that there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(e), Committee Notes on Rules – 2007 Amendment. In 2010, the Rule was revised again to make clear that "summary judgment cannot be granted by default even if there is a complete failure to respond to the motion, much less when an attempted response fails to comply with Rule 56(c) requirements. Nor should it be denied by default even if the movant completely fails to reply to a nonmovant's response." Fed. R. Civ. P. 56(e), Committee Notes on Rules – 2010 Amendment. Rule 56(e) now provides several options at the judge's discretion, including providing the non-moving party with "an opportunity to properly support or address the fact," "consider[ing] the fact undisputed for purposes of the motion," granting summary judgment if the movant is entitled to it, or "issu[ing] any other appropriate order." Fed. R. Civ. P. 56(e).

entitled to summary judgment by default simply because of the inadequacy of the responses of Orth or the other defendants.

C. Defendants' Asserted Statutory Bars to the SEC's Claims

Before considering the substantive evidentiary merits of the motions for summary judgment, I will address two statutory bars raised by defendants Morrone and Jurberg: first, that the catch-all federal statute of limitations bars some of the SEC's claims, and second that much of the alleged conduct is extraterritorial and therefore outside the reach of U.S. securities laws.

1. Statute of Limitations

Morrone and Jurberg contend that the catch-all limitations period in 28 U.S.C. § 2462 precludes all claims against them for any acts occurring more than five years prior to the filing of the complaint (in other words, any acts prior to September 10, 2007). If they are correct, the SEC cannot obtain relief for some of their actions involving the domestic sale of stocks from 2004 until early September 2007.

The SEC is authorized by statute to enforce the provisions of the Securities Act and the Exchange Act by filing an action in federal court to enjoin acts or practices that violate these statutes. *See* 15 U.S.C. §§ 77t(b), (d), 78u(d)(1), (3), (5). It may also seek civil monetary penalties for such violations. *See id.* Section 2462 imposes a statute of limitations on "an

action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture. . . ." 28 U.S.C. § 2462. This includes actions brought by the SEC seeking monetary penalties.[14] *See Gabelli* v. *SEC*, 568 U.S. 442, 444-45 (2013). It is not entirely clear, however, what constitutes a "penalty" for purposes of § 2462 or whether injunctive relief is subject to § 2462. What is clear is that disgorgement claims in SEC proceedings are subject to the § 2462 limitations period. *See Kokesh* v. *SEC*, 137 S.Ct. 1635, 1644 (2017).

In this case, the SEC sought a permanent injunction barring the defendants from violating the relevant provisions of the federal securities laws and the imposition of officer and director bars against Morrone, Jurberg, Lu, and Orth. The SEC also sought disgorgement and civil penalties. There can be no question, after *Kokesh*, that disgorgement and civil penalties are subject to the five-year limitations period. The only open question, then, is whether the injunction and officer/director bars are subject to the same limitations period, *i.e.* whether the injunction and officer/director bars sought are penalties for purposes of § 2462.

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[14] The SEC concedes that 28 U.S.C. § 2462 applies to the monetary relief it seeks and recognizes that some of its allegations fall outside of the five-year limitations period, but contends that § 2462 does not apply to its claims for injunctive relief.

The Supreme Court has yet to weigh in on whether injunctions, or owner/director bars, are also "penalties" for purposes of § 2462, but the 2017 *Kokesh* decision provides adequate guidance for my analysis.[15] In *Kokesh*, the Court considered whether SEC disgorgement operates as penalty under § 2462, and it concluded that disgorgement was a penalty, and therefore subject to the five-year statute of limitations. *Kokesh*, 137 S.Ct. at 1644. Specifically, the Court applied two principles in determining whether SEC disgorgement constitutes a penalty within the meaning of § 2462. *Id.* at 1642 (citation omitted). First, the Court noted that whether a sanction represents a penalty turns partially on whether the wrong sought to be redressed is a public or a private wrong. *Id.* (citation omitted). Redress of a public wrong operates as a penalty. *Id.* (citation omitted). Second, the Court noted that a "pecuniary sanction" is a penalty if it is meant to punish or deter, rather than to compensate a particular victim. *Id.* (citation omitted).

The Court applied these two principles to the question of disgorgement, focusing on the proposition that SEC disgorgement

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[15] Circuit courts have reached differing conclusions. *Compare SEC* v. *Graham*, 823 F.3d 1357, 1362 (11th Cir. 2016) (concluding "that the five-year statute of limitations is inapplicable to injunctions"), *with SEC* v. *Bartek*, 484 F. App'x 949, 957 (5th Cir. 2012) (per curiam) (concluding that the nature of the injunction, a case-specific question, determines whether it is a penalty, thereby subject to § 2462's time limitations, or simply remedial, and therefore not subject to the statute).

is a consequence for violating public laws and the proposition that SEC disgorgement is meant to deter. *Id.* at 1642-43. Finally, the Court explored circumstances suggesting that SEC disgorgement is not often actually compensatory. *Id.* at 1644.

Applying the *Kokesh* principles here, there can be no doubt that both the injunction and officer/director bars sought here are penalties, and subject to the five-year limitations period. First, the wrong the SEC seeks to redress in this case is a public wrong. That is, the injunction and officer/director bars are imposed as a consequence of violations committed against the laws of the United States. Second, there is no question that an injunction ordering the defendants to follow the law and a bar on their future abilities to act as officers or directors are meant to deter, not to compensate. To the extent that injunction and the officer/director bars could be construed to serve goals outside of the deterrent purposes they clearly address here, the Supreme Court made clear that so long as one of the goals is that of deterrence or retribution, that is sufficient to classify the remedy as a penalty. *See id.* at 1645.

Accordingly, I conclude that the five-year statute of limitations is applicable to all remedies sought by the SEC. While practically, in this case, the limitations period will not change the nature of the injunction or the officer/director bars

sought, I nevertheless find that the SEC may not seek monetary penalties, disgorgement, injunction, or an officer/director bar for any fraudulent conduct that occurred prior to September 10, 2007, five years before it filed its complaint. This includes, for example, Morrone and Jurberg's offering and sale of Bio Defense stock at prospective investor conferences in Syracuse, New York in 2004. However, it does not bar relief for Morrone and Jurberg's conduct involving the solicitation of an enforcement attorney at the Texas State Securities Board in late September and October 2007, which ultimately led to their receipt of a cease-and-desist order from the Board, or any of the defendants' conduct involving the overseas fundraising projects, which began in 2008.

2. Application of U.S. Securities Laws to Conduct Abroad

Morrone asserts that the federal securities laws at issue here do not apply to the alleged conduct because the conduct was extraterritorial.[16] Specifically, he contends that many of the alleged stock sales, presumably those occurring through the overseas fundraising projects that began in 2008, occurred because of a solicitation made in one European country, such as

[16] Hamburger's motion to dismiss references jurisdictional issues and is simply a reiteration of this summary judgment argument. Consequently, I do not discuss the motion to dismiss separately, but note that the analysis in this section is equally applicable to the motion to dismiss.

Portugal, to a potential investor in England, and that the investors identified in the complaint are English citizens who knew that the Bio Defense stocks were not traded on a United States exchange. The SEC contends that the conduct at issue satisfies the test articulated by the Supreme Court in *Morrison* v. *Nat'l Australia Bank Ltd.*, 561 U.S. 247 (2010), and further defined by the Second Circuit in *Absolute Activist Value Master Fund Ltd.* v. *Ficeto*, 677 F.3d 60, 68 (2d Cir. 2012).[17]

In *Morrison*, the Supreme Court articulated a "transactional" test for determining whether conduct alleged to have violated § 10(b) of the Exchange Act occurred within the territorial jurisdiction of the United States, such that it may

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[17] Judge Parrish in the District of Utah has taken the position that Section 929P(b) of the Dodd-Frank Act, which was signed into law less than a month after *Morrison*, was intended to replace the *Morrison* transaction test with a "conduct and effects" test. *SEC* v. *Traffic Monsoon, LLC*, 245 F. Supp. 3d 1275, 1288-94 (D. Utah 2017); *see also United States* v. *McLellan,* No. 16-CR-10094-LTS, 2018 WL 1083030, at *2 (D. Mass. Feb. 27, 2018)(*McLellan I*) (recognizing, but not deciding, the issue of whether the amendments to § 929P(b) superseded the *Morrison* test).

Traffic Monsoon was appealed. The 10th Circuit affirmed, *SEC v. Scoville*, 413 F.3d 1204 (10th Cir. 2019), applying the conduct and effects test created by the Dodd-Frank amendment and holding the federal securities laws reached sales to customers outside the United States.

McLellan is now on appeal, *United States v. McLellan*, 1st Cir. No. 18-2032 (*McLellan II*) (Docketed 10/25/18), and the issue regarding application of the *Morrison* framework has been fully briefed. Oral argument in the First Circuit is set for October 10, 2019. I note the "conduct and effects" test, which is itself met here, is broader than the *Morrison* test.

be subject to U.S. securities laws.[18] *Morrison*, 561 U.S. at 269-70. Under this test, conduct may be considered "domestic" and therefore subject to § 10(b) if "the purchase or sale [of the security] is made in the United States, or involves a security listed on a domestic exchange . . . ." *Id.; see id.* at 267 (§ 10(b) applies only to "transactions in securities listed on domestic exchanges, and domestic transactions in other securities . . . .") The Court suggested that this test would also apply to other provisions of the Exchange Act, as well as provisions of the Securities Act. *Id.* at 268 (noting that Securities Act contains "same focus on domestic transactions" and is "part of the same comprehensive regulation of securities trading.")

The First Circuit, unlike the Second Circuit, *see Absolute Activist*, 677 F.3d at 67, has not interpreted or applied *Morrison* in this context.[19] The Second Circuit, however, has

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[18] The Supreme Court also made clear that whether § 10(b) applies to certain conduct is a "merits" question rather than a question of subject matter jurisdiction. *Morrison*, 561 U.S. at 253-54.

[19] I note that the issue was briefly discussed by the District Court in *McLellan I* (holding that the conduct alleged in the superseding indictment referencing actions taken by traders located in the United States satisfied the *Morrison* test). In their briefing in *McLellan II*, the parties contest whether the wire fraud statute applies extraterritorially under *Morrison*; however, they have not briefed the amendments to § 929P(b). *See* Appellant's Brief (filed 3/1/19) at 38-48 (district court erred in declining to instruct the jury that the wire fraud statute did not apply extraterritorially under two-step *Morrison* framework); Appellee's Brief (filed 7/26/19) at

squarely addressed the circumstances in which a transaction involving a security that is not traded on a domestic securities exchange will be considered a "domestic transaction," such that § 10(b) – and presumably other provisions of the Exchange Act and the Securities Act – may apply to conduct involving the sale of that security. Specifically, the Second Circuit has held that "transactions involving securities that are not traded on a domestic exchange are domestic if irrevocable liability is incurred or title passes within the United States." *Id.* Focusing on the moment of incurring liability over alternative approaches suggested by the parties, the Second Circuit held this occurs when "the purchaser incur[s] irrevocable liability within the United States to take and pay for a security, or . . . the seller incur[s] irrevocable liability within the United States to deliver a security," or when "title is transferred." *Id.* at 68.

47-54 (district court did not err in declining to give extraterritoriality instruction to jury, as wire fraud statute does apply extraterritorially under *Morrison* and its progeny); Reply Brief (filed 8/12/19) at 16-20 (same as appellant's initial brief, arguing that Section 1343 does not apply extraterritorially). The question whether the wire fraud statute, a parallel to § 10(b), applies extraterritorially has split the circuits. *Compare United States* v. *Georgiou*, 777 F.3d 125, 137-38 (3d Cir. 2015) (holding that § 1343 applies extraterritorially) *with European Community* v. *RJR Nabisco, Inc.*, 764 F.3d 129 (2d Cir. 2014) (holding that the wire fraud statute does not apply extraterritorially, as general reference to foreign commerce does not defeat the presumption against extraterritorial application).

Here, Bio Defense received the proposed subscription agreements from overseas investors, and Lu counter-signed them in Bio Defense's Boston office before mailing the stock certificates to the investors. Bio Defense, as the seller, incurred irrevocable liability within the United States when Lu counter-signed the subscription agreements. Therefore, the transactions at issue may be considered domestic for purposes of applicability of Federal securities laws under *Morrison* and *Absolute Activist*.

Having addressed the defendants' broader legal challenges to the claims against them, I turn to the substantive evidentiary merits of the specific claims.

D. Registration Violations

1. Violation of § 5 of the Securities Act (Count 5)

The SEC asserts that Morrone, Jurberg, and Orth violated §§ 5(a) and (c) of the Securities Act by offering and selling unregistered securities through interstate commerce or the mails. *See* 15 U.S.C. §§ 77e(a), (c).[20]

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[20] Section 5(a) of the Securities Act, as codified at 15 U.S.C. § 77e(a)(1), provides: "Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly . . . to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise." Section 5(c) of the Securities Act, as codified at 15 U.S.C. § 77e(c), provides: "It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or

Section 5 imposes strict liability on sellers of securities because registration is designed to ensure "adequate disclosure to members of the investing public . . . ." *SEC* v. *Harwyn Indus. Corp.*, 326 F. Supp. 943, 954 (S.D.N.Y. 1971); *see SEC* v. *Calvo*, 378 F.3d 1211, 1215 (11th Cir. 2004) (per curiam) (collecting cases) (no scienter requirement under § 5). To prove a violation of § 5, the SEC must demonstrate "(1) lack of a registration statement as to the subject securities; (2) the offer or sale of the securities; and (3) the use of interstate transportation or communication and the mails in connection with the offer or sale." *SEC* v. *Cavanagh*, 445 F.3d 105, 111 n.13 (2d Cir. 2006) (quoting *Europe & Overseas Commodity Traders, S.A.* v. *Banque Paribas London*, 147 F.3d 118, 124 n.4 (2d Cir. 1998), *abrogated on other grounds by Morrison*, 561 U.S. 247) (internal quotation marks omitted).

a. No Registration Statement

No registration statement was filed with the SEC for any of the sales of Bio Defense stock from 2004 through 2010. Although Morrone asserts that Bio Defense filed a registration statement pursuant to Regulation D to offer the sale of shares, the document on which Morrone relies is a 2002 notice of sale of

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communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security . . . ."

unregistered securities pursuant to a Regulation D exemption; this was well before the alleged misconduct in this case, and does not satisfy the registration requirement. *See First Multifund for Daily Income, Inc.* v. *United States*, 602 F.2d 332, 335 (Ct. Cl. 1979) (registration statement covers only those specific securities specifically proposed to be offered therein); *see also* 15 U.S.C. §§ 77f-77h, 77j, Schedule A (25), (26) (describing required elements of registration statement).

b. Offer or Sale of Securities

There is no genuine dispute that Morrone, Jurberg, and Orth offered and sold the securities at issue, at least at certain points. As defined by the statutory scheme, to "offer to sell" or "offer for sale" includes "every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value." 15 U.S.C. § 77b(a)(3). A defendant may be held liable under § 5 even if he was not the final seller of the securities if he "was a 'necessary participant' or 'substantial factor' in the illicit sale." *Calvo*, 378 F.3d at 1215 (citing *SEC* v. *Friendly Power Co. LLC*, 49 F. Supp. 2d 1363, 1367 (S.D. Fla. 1999)); *SEC* v. *Holschuh*, 694 F.2d 130, 139-40 (7th Cir. 1982); *SEC* v. *Murphy*, 626 F.2d 633, 649-52 (9th Cir. 1980)); *see also SEC* v. *CMKM Diamonds, Inc.*, 729 F.3d 1248, 1255 (9th Cir. 2013) (requiring that defendant play significant role in transaction for § 5 liability to attach, meaning that he was

"both a necessary participant and substantial factor in the sales transaction," which requires more than "but for" causation) (internal quotation marks and citations omitted). This concept of participant liability captures the "directly or indirectly" language of § 5.

The undisputed evidence demonstrates that Morrone, Jurberg, and Orth either directly sold the securities at issue or satisfied the participation test at multiple points and had "significant and continuing involvement in the development and execution of a scheme to distribute securities in violation of the Securities Act . . . ." *CMKM Diamonds*, 729 F.3d at 1259. Jurberg and Morrone's contention that there is no evidence that either of them ever solicited or sold any of the Bio Defense stock at issue is clearly refuted by the following evidence of record.

i. Period from 2004 through 2007[21]

In 2004, Morrone and Jurberg gave presentations at Bio Defense's prospective investor conferences that solicited

[21] Although the defendants' acts before September 10, 2007, as I have concluded in Section II.C.1 above, are beyond the statute of limitations, I address the defendants' conduct during this period, to the degree it predates September 10, 2007 in accordance with the permitted uses outlined in Fed. R. Evid. 404(b)(2). Given the contention of the defendants that the SEC has not demonstrated the requisite intent, this evidence becomes particularly pertinent with respect to securities provisions other than § 5 and § 15 of the Securities Act, that have intent as an element.

investors for the Bio Defense stock, and indeed resulted in the purchase of stock by investors. They also engaged in in-person and phone conversations with potential investors and mailed them proposed stock subscription agreements, which investors then completed, signed, and returned for purchase of shares.[22] Orth also solicited at least one potential investor during that year by phone who agreed to purchase shares, received the stock offering documents following the phone call, and returned the paperwork to Orth to finalize the purchase. The same investor purchased more shares through communications and mail exchanges with Orth in 2007. Orth also solicited Joseph Catalani in 2007

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[22] For example, in 2004, Jurberg received a call from a potential investor, Christian Michalkow. Jurberg explained to Michalkow why Bio Defense was a good investment and sent him a package overnight with a stock subscription agreement. Jurberg later sent the same investor a subscription agreement to purchase more shares. In 2005, Jurberg pressed Michalkow to purchase more shares, and he did so.

In 2004, another investor, Peter Antonowicz, along with his wife, Brenda, decided to invest in Bio Defense stock after having met in late 2003 with Lu, Morrone, and Jurberg, who provided them with a subscription agreement to complete. Morrone and Jurberg followed up with the Antonowiczes throughout 2004 inviting them to purchase more Bio Defense stock and to attend the investor conferences in Syracuse. Ultimately, the Antonowiczes purchased more Bio Defense stock.

In December 2007, Jurberg assisted several investors in transferring money from their individual retirement accounts to another financial services company so that they could purchase Bio Defense stock using their IRA funds. Jurberg corresponded with these investors by phone, fax, and DHL. Jurberg’s conduct with regard to these investors unquestionably rendered him a necessary participant and substantial factor in these investors’ purchases. *See Calvo*, 378 F.3d at 1215.

(and 2008) for $30,000.

In October 2007, Morrone, Jurberg, and Orth participated in an investor conference call, which was monitored by the Texas State Securities Board after one of its enforcement attorneys received a telephone call soliciting her for the purchase of Bio Defense stock and inviting her to participate in the conference call. During the call, each defendant spent time speaking about the Bio Defense product and encouraging investment. Although, standing alone, this would not necessarily be sufficient to satisfy the necessary participant test, it supports the contention that the defendants played a central role in soliciting and maintaining investors. Clearly, from 2004 through 2007, including times after September 10, 2007, Morrone, Jurberg, and Orth were actively engaged in soliciting offers for the purchase of Bio Defense securities and managing the process to complete the resulting sales. *Cf. Murphy*, 626 F.2d at 638, 652 (defendant played "extensive role in facilitating the transactions" because "he met personally with broker-dealers, investors and their representatives" and "spoke at broker-dealer sales seminars"); *SEC* v. *Chinese Consol. Benevolent Ass'n*, 120 F.2d 738, 739-40 (2d Cir. 1941) (defendants violated § 5 by urging individuals in various states to purchase securities at issue and delivered purchasers' money and written applications on their behalf to the bank and the seller).

ii. Period from 2008 through 2010

From 2008 through 2010, during the overseas fundraising projects orchestrated by Hamburger (and, later, Orth), Morrone, Jurberg, and Orth played different roles.

1. Morrone

Morrone was involved in the creation of the materials included in the investor packet to be sent to potential overseas investors; this packet included payment instructions for investors to wire payment to Bio Defense and an introductory letter, to be signed by Morrone as Executive Vice President of Bio Defense. That letter instructs investors to fax the enclosed subscription agreement back to Morrone in Boston and indicates that, once received, Morrone would send the share certificate to the investor by overnight express mail. Although it is unclear what level of involvement Morrone had in actually drafting the text of the letter, as compared to Hamburger, Morrone was, at a minimum, aware that his name would be on the introductory solicitation letter and aware of its contents, and he was responsible for providing the payment instructions that would be included in the packet. Morrone was also responsible for mailing out the investor packets, and, when the investor returned the paperwork along with payment, obtaining Lu's signature on the stock certificate and mailing out the certificate to the investor. As Morrone characterizes the

situation, "I was a delivery service to Mr. Lu." Although simply mailing paperwork back and forth between the company and the investor would likely not, standing alone, be enough to establish that Morrone was a necessary participant and substantial factor in the sales, Morrone's correspondence with Hamburger in preparing the paperwork to be used to solicit and execute securities sales and his general supervisory responsibilities for Hamburger's work render Morrone a necessary and substantial participant in the scheme to sell unregistered securities overseas.

2. Jurberg

Jurberg's involvement mirrored the administrative components of Morrone's involvement. Like Morrone, Jurberg prepared and mailed out the individual prospective investor packets using information obtained from the overseas call centers regarding particular investors' interests. This included, on at least one occasion, emailing a subscription agreement directly to a potential investor. Both Hamburger and Lindsey Morrone characterized Jurberg's involvement as administrative, although Lindsey Morrone indicated that Jurberg was the point-of-contact at Bio Defense for existing investors.

Overall, the evidence concerning Jurberg struggles to reach the standard required for summary judgment. Other than sending Hamburger the script to be used by callers in the EU project,

there is no clear evidence that Jurberg was involved in negotiations, signing documents, or engaging in anything more substantial than the administrative task of inputting specific investor data into a subscription template and mailing it to that investor. *See CMKM Diamonds*, 729 F.3d at 1259 (reading opinion letters instructing individuals to remove restrictive legends from stock, and then issuing "large quantities of those shares without the restrictive legend" was insufficient to establish substantial participation for summary judgment purposes); *Geiger* v. *SEC*, 363 F.3d 481, 487 (D.C. Cir. 2004) ("[N]ot everyone in the chain of intermediaries between a seller of securities and the ultimate buyer is sufficiently involved in the process to make him responsible for an unlawful distribution.") (citation and internal quotation marks omitted). That Jurberg was a vice president at Bio Defense does not, in and of itself, render his participation more substantial. *See CMKM Diamonds*, 729 F.3d at 1258 ("A participant's title, standing alone, cannot determine liability under Section 5, because the mere fact that a defendant is labeled as an issuer, a broker, a transfer agent, a CEO, a purchaser, or an attorney, does not adequately explain what role the defendant actually played in the scheme at issue.").

That said, although Jurberg's role in the overseas sales was a ministerial one on its face, it was an important and

necessary step in the stock sales process. A reasonable fact finder could conclude that Jurberg's role in preparing the individual subscription agreements and sending them out did, or alternatively did not, render him a "necessary participant" and a "substantial factor" in the offer and sale of securities overseas. *Cf. SEC* v. *Benger*, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010) (concluding that defendant "facilitated the consummation of the [securities] sales" for purposes of liability under § 15(a) of Exchange Act because he "received and processed documents relating to the sale of the securities . . . and sent the investors' [sic] their share certificates," along with other activities). Accordingly, I find that there is a genuine issue of material fact whether Jurberg had sufficient involvement in the offer and sale of securities through the overseas fundraising projects from 2008 through 2010 to establish liability under § 5.

3. Orth

There is no evidence that Orth was involved with the EU or PT projects. However, Orth orchestrated and therefore was a necessary participant in the offer and sale of securities through two other overseas projects: the CA and GH projects. Orth identified overseas call centers to sell Bio Defense stock and managed their solicitation of overseas investors. Even if Orth did not have direct communication with investors, he was a

necessary participant in arranging and supporting the CA and GH projects that offered and sold the unregistered Bio Defense securities from March 2009 through 2010. *Cf. SEC* v. *Saxena*, 26 F. App’x 22, 23-24 (1st Cir. 2001) (per curiam) (unpublished decision) (defendant violated § 5 because “he provided free advertising for [the company that served as general partner for the investment funds] and the investment funds on his website,” “provided [the partner] free access to his investment newsletter subscriber lists for use in promoting the funds,” and “participated in preparing the offering memoranda for the investment funds . . . .”)

In addition, through Orth’s management of the machine sales buy-back program from 2008 through 2010, Orth made direct offers and sales of these investments. These investments fall within the “investment contract” definition of a security under 15 U.S.C. § 77b(a)(1) and therefore were required to be registered. *See SEC* v. *Edwards*, 540 U.S. 389, 393 (2004) (the term security “encompass[es] virtually any instrument that might be sold as an investment”) (quoting *Reves* v. *Ernst & Young*, 494 U.S. 56, 61 (1990)).

c. Interstate Commerce

The defendants do not dispute, and the record makes clear, that they engaged in their offers and sales of securities through interstate commerce. “‘[I]nterstate commerce’ means

trade or commerce in securities or any transportation or communication relating thereto among the several States . . . or between any foreign country and any State . . . ." 15 U.S.C. § 77b(a)(7). Morrone, Jurberg, and Orth solicited investors with telephone calls, faxes, and emails, and through the mail across state and international borders.

d. No Exemptions Apply

The SEC has established a prima facie violation of § 5. The defendants bear the burden of proving that an exemption to the registration requirement, such as under Regulation D, applies. *See SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953); 17 C.F.R. §§ 230.500, *et seq.* (2018) (Regulation D); *see also Cavanagh*, 445 F.3d at 111-12; *SEC* v. *Bronson*, 14 F. Supp. 3d 402, 408-409 (S.D.N.Y. 2014). Here, although Morrone alluded to an earlier exemption in a 2002 filing, none of the defendants have argued that Bio Defense's securities offerings from 2004 through 2010 qualified as exempt offerings.

Further, as the SEC correctly notes, "a security cannot be exempted from registration under Regulation D if the offeror, in violation of Rule 502(c), engages in 'any form of general solicitation or general advertising.'" *SEC* v. *Tecumseh Holdings Corp.*, No. 03 Civ.5490(SAS), 2009 WL 4975263, at *4 (S.D.N.Y. Dec. 22, 2009) (citation omitted). A cold-calling campaign qualifies as a general solicitation. *See id.* (noting that the

most important criterion of a nationwide cold-calling campaign rendering it ineligible for exemption is that "it generally targets people with whom the issuer does not have a prior relationship and who are unlikely to have any special knowledge about the offered security"); *see also SEC* v. *Rabinovich & Assocs., LP*, No. 07 Civ. 10547(GEL), 2008 WL 4937360, at *4 (S.D.N.Y. Nov. 18, 2008); *SEC* v. *Credit First Fund, LP*, No. CV05-8741 DSF (PJWx), 2006 WL 4729240, at *13 & n.26 (C.D. Cal. Feb. 13, 2006). There is no genuine dispute that the methods of sale undertaken by the defendants included, at a minimum, cold-calling operations in Boston in 2007 and through its overseas call centers from 2008 through 2010.

Accordingly, the SEC is entitled to summary judgment on Count Five, with regard to Morrone, Jurberg, and Orth.

2. Violation of § 15 of the Exchange Act (Count 6)

The SEC asserts that Morrone, Jurberg, Orth, and Hamburger violated § 15(a) of the Exchange Act in offering and selling securities without registering as brokers or dealers. *See* 15 U.S.C. § 78o(a)(1). Under 15 U.S.C. § 78o(a)(1), it is unlawful "for any broker or dealer . . . to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security . . . unless such broker or dealer is registered . . . ." Registration entails "filing with the [SEC]

an application for registration" as directed by the SEC. 15 U.S.C. § 78o(b). As with liability under § 5 of the Securities Act, there is no scienter requirement under § 15 of the Exchange Act. *See Martino*, 255 F. Supp. 2d at 283.

It is undisputed that Morrone, Jurberg, Orth, and Hamburger were not registered as brokers or dealers with the SEC during the relevant time period, nor were their consulting companies. It is also undisputed, as discussed above, that if the defendants did effect transactions related to the purchase or sale of a security, as required for liability under § 15, that those transactions were made through the mails and other instrumentalities of interstate commerce.[23] The only question, then, is whether each defendant qualifies as a broker for the purposes of § 15 liability. Defendants Morrone, Jurberg, and Hamburger contend that they do not. The defendants have not argued that if they do qualify, an exemption applies to shield them from liability.

a. Definition of a Broker or Dealer

A "broker" is defined as "any person engaged in the business of effecting transactions in securities for the account

[23] As with the other defendants, Hamburger's conduct involved communications through email and mail across state and international borders.

of others." 15 U.S.C. § 78c(a)(4)(A).[24] "In determining whether a particular individual or entity falls within this definition, courts consider whether the individual may be characterized by a certain regularity of participation in securities transactions at key points in the chain of distribution." *Martino*, 255 F. Supp. 2d at 283 (quoting *SEC* v. *Hansen*, No. 83 Civ. 3692, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984)) (internal quotations removed)). "Regularity of participation can be shown by such factors as the dollar amount of securities sold . . . and the extent to which advertisement and investor solicitation were used." *SEC* v. *Offill*, No. 07-CV-1643-D, 2012 WL 246061, at *7 (N.D. Tex. Jan. 26, 2012) (citation and internal quotation marks omitted).

Judges in the Southern District of New York and elsewhere have employed a multi-factor test to assess whether an individual qualifies as a broker, considering whether the individual "1) is an employee of the issuer; 2) received commissions as opposed to a salary; 3) is selling, or previously sold, the securities of other issuers; 4) is involved in negotiations between the issuer and the investor; 5) makes valuations as to the merits of the investment or gives advice;

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[24] Similarly, a "dealer" is defined as "any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise." *Id.* § 78c(a)(5)(A).

and 6) is an active rather than passive finder of investors." *Hansen*, 1984 WL 2413, at *10 (citations omitted); *see Benger*, 697 F. Supp. 2d at 944-45 (applying *Hansen* factors but noting that they are neither exclusive nor applicable in every case); *see also Offill*, 2012 WL 246061, at *7 (identifying several of these factors as important considerations). Transaction-based compensation in particular has been recognized as a "hallmark" of a broker. *See Cornhusker Energy Lexington, LLC* v. *Prospect Street Ventures*, No. 8:04CV586, 2006 WL 2620985, at *6 (D. Neb. Sept. 12, 2006) (citation omitted).

The SEC has informally recognized that in limited circumstances, an individual may act as a finder, "perform[ing] a narrow scope of activities without triggering b[r]oker/dealer registration requirements." *See id.* (referencing a series of no-action letters by the SEC). A finder who merely "bring[s] the parties together with no involvement on [his] part in negotiating the price or any of the other terms of the transaction" may not be subject to registration requirements and therefore § 15 liability. *Offill*, 2012 WL 246061, at *7 (alterations in original; citation omitted); *see Cornhusker*, 2006 WL 2620985, at *6. However, when an individual's activities include "analyzing the financial needs of an issuer, recommending or designing financing methods, involvement in negotiations, discussion of details of securities transactions,

making investment recommendations, . . . prior involvement in the sale of securities," or receiving transaction-based compensation, among other indicators, he or she is acting as a broker or dealer rather than merely a finder. *Cornhusker*, 2006 WL 2620985, at *6. In addition, when an individual places himself "squarely in the middle of each transaction in order to reap the profits," he will be considered a broker or dealer rather than a finder. *Couldock & Bohan, Inc.* v. *Societe Generale Sec. Corp.*, 93 F. Supp. 2d 220, 229 (D. Conn. 2000).

b. Morrone, Jurberg, and Orth

Morrone, Jurberg, and Orth each satisfy virtually all of the *Hansen* factors. First, they all received transaction-based compensation as a certain percentage of investor money. Their payments were based on invoices they submitted detailing the number and size of investor payments, and from 2004 through 2010 they received substantial sums. The three defendants, along with Lu, held official titles at Bio Defense and were the only Bio Defense officials who were paid on commission rather than a regular salary, and who were paid through their own third-party consulting companies.[25]

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[25] Although Jurberg asserts in opposition that he did not hold an official title at Bio Defense, Morrone testified that Jurberg was the vice president of sales and marketing and later became senior vice president of sales and marketing. Orth was also a vice president of marketing. Morrone was senior executive vice president, and Lu was Chief Executive Officer.

Second, both Morrone and Jurberg had prior securities sales experience. Morrone had worked as a licensed registered representative for a number of securities companies during the eight previous years. For his part, Jurberg had also worked as a licensed stockbroker and for an investment bank.

Third, Morrone, Jurberg, and Orth had direct contact with potential investors and were actively engaged in the presentation of the benefits of investment in Bio Defense stock. Although Morrone and Jurberg contend that it was not their responsibility to raise capital or sell stock, and that they never held themselves out as securities brokers or agents for Bio Defense stock or solicited or sold such stock, the evidence clearly demonstrates otherwise.

During the 2004 through 2007 period,[26] Morrone and Jurberg encouraged investment in Bio Defense stock. Similarly, Orth spoke with prospective investors about Bio Defense stock, encouraged investment, arranged for sales, and supervised others who called potential investors to solicit offers. Jurberg also assisted multiple investors with rolling over IRA accounts so that they could purchase Bio Defense stock. All three defendants participated in investor conference calls encouraging

[26] For the qualifications I have placed on evidence from this time period, *see* Note 21.

investment.[27] Clearly, all three defendants qualified as brokers during this period. *See Martino*, 255 F. Supp. 2d at 283-84 (defendants qualified as brokers because they "continuously" contacted investors regarding stock payment, satisfaction with transactions, and receipt of purchase agreements; offered "'consulting' services that [were] plainly . . . brokerage services," assisted in negotiating stock sales, continuously solicited purchases of stock, and earned commission and percentage of proceeds of sales); *Hansen*, 1984 WL 2413, at *2, *10-11 (defendant qualified as broker because he received commissions on his sales, previously sold securities of another issuer, engaged in active finding of investors, frequently gave investors advice on the merits of investment, made written and oral representations regarding investment, and promoted sales at a symposium).

During the 2008 through 2010 period, Morrone, Jurberg, and Orth took on different roles. As discussed above, Morrone was involved in the preparation of the materials for the investor packets to be used in the overseas fundraising projects, and

[27] Contrary to Jurberg's own contention, such solicitations were precisely what he was retained by Bio Defense to do. Jurberg's consulting company, BCP, entered into an agreement with Bio Defense in 2003 to provide "capital raising services" and services in "venture capital sourcing." The agreement provided for a 15% fee to be paid to BCP for capital received from "BCP sourced providers."

both Morrone and Jurberg engaged in preparing individual investor solicitation agreements based on information provided by the overseas call centers, mailing those agreements and packets to the prospective investors, receiving the completed agreements, and mailing out the stock certificates after Lu had counter-signed them. When considered in conjunction with other factors, such as their transaction-based compensation, their previous domestic solicitation of stocks – which ceased only after investigations by securities regulators from two different states – and the length and frequency of their involvement in these overseas projects, their conduct rises to the level of "regular[ ] . . . participation in securities transactions at key points in the chain of distribution." *See Mass. Fin. Servs.*, 411 F. Supp. at 415; *see also Benger*, 697 F. Supp. 2d at 945 (defendant did not satisfy *Hansen* factors but nonetheless qualified as broker because he "received and processed documents . . . and sent the investors' [sic] their share certificates," thereby "facilitat[ing] the consummation of the sales," and received transaction-based compensation).

From 2008 through 2010, Orth was engaged in direct solicitation through the machine sales buy-back program, in which he gave investment advice and negotiated with at least one investor. This activity clearly constitutes "effect[ing] . . . transactions." 15 U.S.C. § 78o(a)(1). Simultaneously, Orth

managed two overseas programs engaged in soliciting investors and selling Bio Defense stocks. *See Hansen*, 1984 WL 2413 at *2 (considering defendant's hiring of individuals to offer and sell investments by mailing out written materials prepared by defendant and by using script provided by defendant as relevant in determining that defendant acted as broker).

Although Morrone, Jurberg, and Orth may have had limited direct contact with investors during the overseas projects, they stood "squarely in the middle of each transaction" and indeed "reap[ed] the profits" by earning a commission on each investment they touched. *See Couldock*, 93 F. Supp. 2d at 229. The directness of their involvement in the securities sales may have ebbed and flowed over the course of their extended relationship with Bio Defense, but it was certainly broader than that of a mere finder who has no broker/dealer experience and simply brings parties together. *See Offill*, 2012 WL 246061 at *7; *Cornhusker*, 2006 WL 2620985 at *6. Accordingly, I conclude that there is no genuine issue of material fact in dispute regarding the proposition that Morrone, Jurberg, and Orth effected transactions in the sale of securities while they were not registered as brokers or dealers with the SEC, in violation of § 15(a) of the Exchange Act.

c. Hamburger

Hamburger contends that if he provided any services related to Bio Defense securities sales, it was only in generating leads and introducing possible sources of capital, and it was merely "incidental and collateral to the sale of Bio Defense stock in Europe." In other words, he maintains that he was merely a finder. The SEC asserts that Hamburger's coordination of and substantial participation in the overseas fundraising projects demonstrates that he acted as a broker in those endeavors and therefore is subject to § 15 liability.

Like the other defendants, Hamburger satisfies many of the *Hansen* factors. Hamburger was retained by Bio Defense for the specific purpose of identifying potential investors. He was paid by Bio Defense as a consultant through his consulting company and received transaction-based compensation tied to the investments that resulted from his leads. Hamburger had also previously worked as a stockbroker and sold the securities of other issuers for at least eight years, and had been convicted of conspiracy to commit securities fraud in relation to that prior work. *See Hansen*, 1984 WL 2413, at *10-11 (acknowledging as relevant defendant's prior denial of broker-dealer registration due to violations of securities laws).

In 2008, Hamburger introduced Bio Defense to Agile and facilitated Agile's solicitation of investors outside of the

United States on behalf of Bio Defense through the EU project. He did so by providing Agile with copies of a sample script to use, information regarding Bio Defense and its product, and copies of subscription agreement offering documents that would ultimately be sent by Bio Defense to prospective investors once they had made an offer. Hamburger established the PT project with a different vendor, Mute & Reboot, using a similar process and loaning his own funds to get the project started.

Had Hamburger's involvement ended with making the introduction between Bio Defense and Agile, or Bio Defense and Mute & Reboot, he may have been considered a mere finder not subject to the broker registration requirements. But Hamburger's continued role in supervising the investor solicitation from the call centers, his function as an intermediary between the call centers that obtained investor offers and Bio Defense, and his receipt of compensation based on the resulting investments, transforms his role into that of a broker. *See Benger*, 697 F. Supp. 2d at 945; *Hansen*, 1984 WL 2413, at *2. Even if Hamburger did not have direct contact with investors, he was in the most literal sense a regular participant "in securities transactions at [a] key point[ ] in the chain of distribution," namely, the point at which the investor information is provided to the issuer for preparation and mailing of a stock subscription agreement so that the stock

may be purchased. *See Mass. Fin. Servs.*, 411 F. Supp. at 415; *see also Benger*, 697 F. Supp. 2d at 945. Accordingly, I conclude that there is no genuine issue to dispute the contention that Hamburger effected transactions in the sale of securities without being registered as a broker, in violation of § 15(a) of the Exchange Act.

E. Anti-Fraud Violations

1. Fraudulent or Deceptive Scheme: Violation of § 17(a)(1) of the Securities Act and § 10(b) of the Exchange Act, and Rule 10b-5(a) thereunder (Portions of Counts 1-4)

The SEC contends that Morrone, Jurberg, Orth, and Hamburger substantially participated in a fraudulent overseas operation that deceptively sold Bio Defense securities, in violation of § 17(a)(1) of the Securities Act and § 10(b) of the Exchange Act, and Rule 10b-5(a) thereunder.

Section 17(a)(1), codified as 15 U.S.C. § 77q(a)(1), provides that it is unlawful "for any person in the offer or sale of securities . . . directly or indirectly . . . to employ any device, scheme, or artifice to defraud." Similarly, § 10(b), codified as 15 U.S.C. § 78j(b), provides that it is unlawful

> for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails . . . [t]o use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered . . . any manipulative or deceptive

> device or contrivance in contravention of such rules and regulations as the Commission may prescribe . . . .

Rule 10b-5(a) provides that it is "unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails . . . [t]o employ any device, scheme, or artifice to defraud . . . in connection with the purchase or sale of any security. 17 C.F.R. § 240.10b-5(a). In the context of scheme liability, the requirements to establish violations of the three sections are essentially identical. *See SEC* v. *Durgarian*, 477 F. Supp. 2d 342, 355 (D. Mass. 2007); *see also SEC* v. *Alliance Leasing Corp.*, No. 98-cv-1810-J(CGA), 2000 WL 35612001, at *11 (S.D. Cal. Mar. 20, 2000).[28]

These provisions are intended to "prohibit the full range of ingenious devices that might be used to manipulate securities

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[28] One distinction between § 17(a)(1) and § 10(b) is that § 17(a)(1) liability can be imposed for fraudulent or deceptive conduct in connection with the *offer* for sale of securities, and therefore is not limited to conduct in connection with an actual sale. *See SEC* v. *Tambone (Tambone I)*, 550 F.3d 106, 122 (1st Cir. 2008), *opinion withdrawn and rehearing* en banc *granted*, 573 F.3d 53 (1st Cir. 2009), *opinion restated in part*, 597 F.3d 436 (1st Cir. 2010). There is no substantive difference between the prohibition of fraud "in the offer or sale of any securities," in § 17(a), and "in connection with the purchase or sale of any security," in § 10(b). *See Durgarian*, 477 F. Supp. 2d at 356 (quoting *United States* v. *Naftalin*, 441 U.S. 768, 773 n.4 (1979)). Regardless, this distinction is irrelevant here, since all of the overseas fundraising projects were in connection with, and resulted in, actual sales to investors.

prices." *Durgarian*, 477 F. Supp. 2d at 351-52 (quoting *Santa Fe Indus., Inc.* v. *Green*, 430 U.S. 462, 477 (1977)) (internal quotation marks omitted); *see SEC* v. *Zandford*, 535 U.S. 813, 819 (2002) (section 10(b) is not to be construed "technically and restrictively, but flexibly to effectuate its remedial purposes") (citation and internal quotation marks omitted); *see also Superintendent of Ins. of the State of N.Y.* v. *Bankers Life & Cas. Co.*, 404 U.S. 6, 11 n.7 (1971) (section 10(b) prohibits both the "garden type variety of fraud" and "unique form[s] of deception" that employ "[n]ovel or atypical methods . . . .") (citation and internal quotation marks omitted). As a result, a fraudulent scheme need not necessarily involve "clearly illegal conduct," *Durgarian*, 477 F. Supp. 2d at 352; it must, however, involve the employment of "a manipulative or deceptive device . . . intended to mislead investors." *Id.* (quoting *In re Lernout & Hauspie Sec. Litig.*, 236 F. Supp. 2d 161, 173 (D. Mass. 2003)) (internal quotation marks omitted).

In addition, to be held liable under § 17(a)(1), § 10(b), and Rule 10b-5(a), a defendant must have "'substantially participated' in the alleged scheme and acted with scienter." *Durgarian*, 477 F. Supp. 2d at 353; *see Aaron* v. *SEC*, 446 U.S. 680, 695-97 (1980) (scienter is required element under § 17(a)(1) because the language "plainly evinces an intent on

the part of Congress to proscribe only knowing or intentional misconduct.")

a. Fraudulent or Deceptive Scheme

The commissions charged by Agile and Mute & Reboot in the EU and PT projects and the commissions charged by the overseas fundraisers in the CA and GH projects were exorbitant, and the failure to disclose those fees in the offering documents given to investors was deceptive. In failing to disclose these commissions to investors, Bio Defense led investors to believe that their investments would be used to develop Bio Defense into a successful company that would then produce returns for its investors.

Disclosure of fees and commissions that will reduce the amount of the investment used to fund the company is critical to enabling investors to make informed decisions. "The SEC has established through its enforcement actions the principle that charging undisclosed excessive commissions constitutes fraud." *Ettinger* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 835 F.2d 1031, 1033 (3d Cir. 1987). A defendant can avoid such fraud by charging a reasonable price "or disclosing such information as will permit the customer to make an informed judgment upon whether or not he will complete the transaction." *Id.* (quoting *In re Duker & Duker*, 8 S.E.C. 386, 388-89 (1939)) (internal quotation marks omitted). As Judge Jones has noted,

"in unregistered securities offerings, it is industry practice to disclose the amount of commissions paid as part of the sales effort." *Alliance Leasing Corp.*, 2000 WL 35612001, at *9; *see also SEC* v. *Levine*, 671 F. Supp. 2d 14, 30 (D.D.C. 2009) (failure to disclose 75% commission on securities purchase applications was "material misrepresentation").

Here, the commission fee imposed in all of the overseas projects was exorbitant. *See Levine*, 671 F. Supp. 2d at 30 (75% commission is exorbitant); *Alliance Leasing Corp.*, 2000 WL 35612001, at *8-9 (30% commission is exorbitant and "one that most reasonable investors would deem material in determining whether to invest"). The failure to disclose the commission to investors rendered the overseas fundraising projects deceptive.

b. Substantial Participation with Scienter

Liability under § 17(a)(1), § 10(b), and Rule 10b-5(a) also requires substantial participation, with scienter, by each defendant. Substantial participation does not necessarily require orchestration or direction of a deceptive scheme, but it does require that the defendant "directly or indirectly employ[ed] a manipulative or deceptive device . . . intended to mislead investors. . . ." *See Lernout*, 236 F. Supp. 2d at 173.

Scienter is defined as "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Scienter, in some cases, "may

extend to a form of extreme recklessness," *In re Cabletron Sys., Inc.*, 311 F.3d 11, 38 (1st Cir. 2002), that is, "a highly unreasonable omission, involving not merely simple, or even inexcusable, negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious the actor must have been aware of it." *Greebel* v. *FTP Software, Inc.*, 194 F.3d 185, 198 (1st Cir. 1999) (quoting *Sundstrand Corp.* v. *Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977)). As a result, the SEC "must demonstrate that the defendants acted with a high degree of recklessness or consciously intended to defraud." *SEC* v. *Fife*, 311 F.3d 1, 9 (1st Cir. 2002) (citation omitted); *see Geffon* v. *Micrion Corp.*, 249 F.3d 29, 35-36 (1st Cir. 2001).

i. Morrone

Morrone contends that he did not substantially participate in the overseas project because his role was limited to the mere mailing out of investor packets and subscription agreements, which does not rise to the level of substantial participation. He asserts that he neither prepared the offering documents for overseas investors nor controlled the disclosures made to such investors. The record, however, clearly establishes that it was Morrone and Hamburger who prepared the offering documents, not

Barbara Jones or other outside counsel as Morrone suggests.[29] Morrone was involved in more than mere mailings. He was the signatory on the introductory letter included in the packet and played a role in preparing the documents that would be sent to investors. This direct involvement in the preparation of the content of the investor packet in August 2008, coupled with the resulting and ongoing distribution of those materials to prospective investors, is enough to establish substantial participation in the deceptive scheme.

At the time that Morrone prepared the materials in early August 2008 and then distributed them, he knew that Agile proposed to charge a 75% commission. He also knew that, in the opinion of Barbara Jones, Bio Defense's outside counsel, this commission was exorbitant and unacceptable. Demonstrating that a defendant had knowledge of the excessive commission and did not take action to lower the commission, to end the relationship with the companies charging the commission, or to disclose the commission to investors, where such action would be within the realm of that defendant's responsibilities in connection with the sale of the securities, is sufficient to establish scienter. *See Levine*, 671 F. Supp. 2d at 31-32. Morrone was engaged in

[29] The letter Morrone cites as support for his contention that Jones prepared the offering documents was never used in the overseas solicitations conducted by Agile and indeed was unrelated to that endeavor.

ongoing dialogue with Hamburger regarding the contents of the investor packet, and he had ample opportunity to provide disclosure of the commission in those materials. He did not do so. Accordingly, Morrone substantially participated in the scheme with scienter.

To the extent Morrone attempts to invoke an advice of counsel defense, his argument is unavailing. *See SEC* v. *Goldsworthy*, No. 06-10012-JGD, 2008 WL 8901272, at *4 (D. Mass. June 11, 2008) (recognizing good faith reliance on advice of professional or counsel "as a means of negating evidence that a defendant acted with the intent necessary to establish liability under the securities laws") (citing *SEC* v. *Goldfield Deep Mines Co. of Nev.*, 758 F.2d 459, 467 (9th Cir. 1985)). Morrone contends that outside counsel advised Bio Defense that the overseas offerings did not violate any laws as long as disclosures were made and suggests that he relied on this advice. However, Morrone's contention is belied by the record evidence; he never made a full disclosure to Jones and he did not follow her advice. "To establish the defense, the defendant should show that he . . . made a complete disclosure, sought the advice as to the appropriateness of the challenged conduct, received advice that the conduct was appropriate, and relied on that advice in good faith." *SEC* v. *Caserta*, 75 F. Supp. 2d 79, 95 (E.D.N.Y. 1999). There is no evidence that Jones advised Bio

Defense that disclosure would render the exorbitant commission legal; even if she did, it is clear that Morrone and his colleagues did not follow this course of action. In addition, Morrone did not disclose to Jones another relevant fact in the calculation of the legality and appropriateness of their overseas operations – namely, that their primary liaison with the overseas fundraisers, Hamburger, had previously been convicted of conspiracy to commit securities fraud and was himself taking a 12.5% commission. Consequently, the advice of counsel defense is not available to Morrone.

ii. Jurberg

Jurberg contends that there is no evidence that he induced or solicited any investor to purchase Bio Defense stock during the overseas projects, suggesting that he did not substantially participate in the schemes employed therein. There is indeed a genuine issue whether Jurberg's involvement was so substantial that it exposes him to liability under § 10(b) and § 17(a)(1).

Although the tests are somewhat different, "substantial participation" under § 10(b) and § 17(a)(1) involves similar assessment of whether an individual was a "necessary participant" and "substantial factor" in the sale of securities under § 5. As to Jurberg's § 5 liability, I concluded that a reasonable fact finder could conclude that Jurberg's involvement in mailing investor packets and signed stock certificates was

sufficiently substantial, or that it was not. *See supra; cf. Benger*, 697 F. Supp. 2d at 945 (recognizing that receiving, processing, and mailing documents is relevant conduct under § 5 to establish liability, but also acknowledging presence of other indicia of participation). Similarly, here, I conclude that there is nothing more to establish that Jurberg substantially participated in the deceptive scheme beyond his administrative tasks. There is a genuine issue whether this rises to the level of "substantial participation."

If a reasonable fact finder were to conclude that Jurberg substantially participated in the overseas sales scheme, liability would certainly follow because Jurberg clearly acted with scienter. Although Jurberg contends that he did not know about the fees charged by Agile, the evidence is entirely to the contrary; indeed, no reasonable fact finder could conclude that Jurberg was unaware of it. Hamburger testified that he informed Morrone, Jurberg, and Lu before Bio Defense began to work with Agile that Agile "had very high expenses," "that raising money through them would be very expensive," and that the cost would be "about 75 percent of the money that came in." In addition, on August 6, 2008, Jurberg was present at a meeting with Jones, Morrone, and Lu where they discussed the 75% commission and it was noted that the fee was "exorbitantly high." This conversation was memorialized in an email sent from Jones to Lu,

Morrone, and Jurberg. It is therefore indisputable that Jurberg knew about the commission and failed to take any action to disclose it. Where Jurberg stood to benefit personally from investments in Bio Defense, and where he knew from receiving complaints that investors believed that the overseas fundraising projects employed illegal, deceptive, and abusive tactics, if he substantially participated in the deceptive scheme, it would have been with the intent to defraud.

iii. Orth

There is no question that Orth's role in the offer and sale of securities through the CA and GH projects rose to the level of substantial participation contemplated by §§ 17(a)(1) and 10(b) and Rule 10(b)-5(a). Orth, as discussed previously, both identified overseas call centers to sell Bio Defense stock and managed the CA and GH projects. As to scienter, there is no direct evidence that Orth knew that Agile was supposed to charge a 75% commission, but an inference can be drawn that Orth knew that the overseas fundraisers in the two projects he managed, the CA and GH projects, charged similarly exorbitant commissions, and that Orth substantially participated in – indeed, orchestrated - the deceptive scheme that these projects furthered. *See Lernout*, 236 F. Supp. 2d at 172, 173.

In the CA project, Bio Defense proposed to pay the fundraisers a 70% fee, and in the GH project, Bio Defense

proposed to pay the fundraisers a 75% fee. There is evidence that Orth connected Bio Defense with these fundraisers and managed their solicitation of overseas investors in Bio Defense stock. In addition, Orth admitted in his answer that he prepared periodic reports in connection with the CA project. Orth has invoked his Fifth Amendment privilege, but there is independent evidence sufficient to support an adverse inference that he was fully versed in the details of the agreement between Bio Defense and these fundraisers, and that he was aware of the commission they were charging. It can also be inferred that Orth knew that the call centers were not disclosing this information to investors, again because of the independent evidence of his managerial role for the projects.

In the absence of any direct evidence it may be harder to infer that Orth acted with the requisite intent, but the conclusion is inevitable under the circumstances. *See In re Varrasso*, 37 F.3d 760, 764 (1st Cir. 1994) (noting that "issues involving a party's state of mind" can be difficult to resolve at summary judgment and urging caution, but recognizing that "circumstantial evidence may be sufficiently potent to establish fraudulent intent beyond hope of contradiction") (citation omitted); *see also SEC* v. *Ficken*, 546 F.3d 45, 51-52 (1st Cir. 2008). Orth stood to benefit personally from the solicitation of overseas investors, and a reasonable investor would be less

likely to purchase the stock if he or she knew that well more than half of the investment would go toward a commission fee. Therefore, it was in Orth's own personal interest not to disclose the commission, and indeed there is no evidence that Orth took any action to disclose it, or to cease relations with the overseas fundraisers because they were charging such a commission. To the contrary, there is evidence that Orth intentionally established business relationships with these overseas fundraisers, despite their high commissions. As a result, I am satisfied that there is no genuine dispute that Orth acted with scienter in managing overseas fundraising projects that he knew failed to disclose the commission for the fundraisers.

iv. Hamburger

Just as Orth can be said to have substantially participated in the CA and GH projects because he orchestrated them, Hamburger clearly orchestrated and therefore substantially participated in the EU and PT projects. *See Lernout*, 236 F. Supp. 2d at 172, 173. He was responsible for establishing the relationship with Agile, for providing the offering documents and other communication materials to the overseas call centers, and for generally overseeing their operations. Indeed, with the PT project, he was directly invested, having lent the call center between $30,000 and $50,000 to begin operations. To the

extent Hamburger asserts that he never managed the overseas call centers and merely served to introduce Agile to Bio Defense, this assertion is directly refuted by the ample evidence of Hamburger's direct and continued involvement in the operation of the EU and PT projects.

There is no dispute that Hamburger knew that Agile would charge a 75% commission fee or that this was not disclosed in the materials; he was the one who negotiated the relationship and prepared the materials. To the extent Hamburger contends that he had no control over the materials distributed on behalf of Bio Defense, this is also refuted by the email exchanges he had with Morrone and Morrone's testimony that Hamburger was a primary contributor to the preparation of those materials.

As with Morrone, Hamburger plainly acted with the requisite scienter. He knew that the commission was exorbitant and that investors would not invest in Bio Defense stock if they knew about the commission, but he intentionally kept this information out of the investor documents that he prepared with Morrone and out of other communications employed by the overseas call centers because he personally stood to benefit from increased Bio Defense investments. *See Levine*, 671 F. Supp. 2d at 31-32. And when he received complaints about the tactics used at the call centers, he continued to operate the deceptive scheme. In

conclusion, Hamburger substantially participated in the deceptive scheme with scienter.

v. Summary

The SEC has demonstrated as a matter of law that Morrone and Orth engaged in a deceptive scheme in violation of § 17(a)(1), § 10(b), and Rule 10b-5(a), as alleged in Counts 1 and 3 of the complaint, and that Hamburger did the same, as alleged in Counts 2 and 4 of the complaint. However, the SEC has not demonstrated that a reasonable fact finder could only conclude that Jurberg substantially participated in the deceptive scheme such that he must be held liable as a matter of law under these provisions. Nor has Jurberg demonstrated that a reasonable fact finder could find only in his favor on this issue. Accordingly, the motions of the SEC and Jurberg as to Jurberg's liability under § 17(a)(1), § 10(b), and Rule 10b-5(a) will both be denied.

2. Fraudulent or Deceptive Practice: Violation of § 17(a)(3) of the Securities Act (Portions of Counts 1 and 2)

Stemming from the same conduct as the scheme to defraud under § 17(a)(1), the SEC alleges that Morrone, Jurberg, Orth, and Hamburger's substantial participation in the deceptive scheme of the overseas fundraising projects violated § 17(a)(3) of the Securities Act. Under § 17(a)(3), codified as 15 U.S.C. § 77q(a)(3), it is "unlawful for any person in the offer or sale

of securities . . . directly or indirectly . . . to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." There is no scienter requirement under § 17(a)(3), because the language of the provision "quite plainly focuses upon the *effect* of particular conduct on members of the investing public, rather than upon the culpability of the person responsible." *Aaron*, 446 U.S. at 695-97 (emphasis in original). Instead, the SEC need only prove negligence. *See Ficken*, 546 F.3d at 52 (noting "the negligence requirement of § 17(a)(2) and § 17(a)(3)"); *see also* Restatement (Second) of Torts §§ 282-284 (1965) ("[N]egligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm," that is, the conduct "of a reasonable man under like circumstances"; negligent conduct includes "a failure to do an act which is necessary for the protection or assistance of another and which the actor is under a duty to do.")

As the analysis under § 17(a)(1) and § 10(b) above makes clear, Morrone, Orth, and Hamburger engaged in a course of business that operated as a fraud on overseas investors, because it deceptively shielded from investors the fact that well over half of their investments would go toward the commission payments for the call centers. As that analysis also makes

clear, there is no genuine dispute that Morrone, Orth, and Hamburger acted with scienter in engaging in this course of business. *See Ficken*, 546 F.3d at 52 (satisfaction of scienter requirement "more than meets the negligence requirement . . . .") The provision of the commission information was necessary for the protection of potential investors, and therefore its omission in any of the communications with investors was negligent. *See* Restatement (Second) of Torts § 284 (1965). Accordingly, the SEC has demonstrated that Morrone, Orth, and Hamburger are liable under § 17(a)(3) as well.

Contrary to my conclusion under § 17(a)(1) regarding Jurberg's liability, I conclude that the SEC has met its burden of demonstrating as a matter of law that Jurberg violated § 17(a)(3). The overseas financing projects clearly had the effect of deceiving and defrauding investors, who believed their investments were primarily being used by the company, but were instead being redirected to commission payments for both the call centers and the defendants themselves. *See Aaron*, 446 U.S. at 697. A defendant may be liable under § 17(a)(3) if he "undertook a deceptive scheme or course of conduct that went beyond . . . misrepresentations." *In re Alstom SA, Sec. Litig.*, 406 F. Supp. 2d 433, 475 (S.D.N.Y. 2005). Here, Jurberg actively "engaged" in the deceptive scheme by participating in the preparation and distribution of individual investor

subscription agreements and other materials, and in his mailing of the stock certificates to investors once they had been prepared. His participation need not have been substantial to satisfy this requirement.

With respect to my discussion of Jurberg's conduct pertaining to § 17(a)(1), § 10(b), and Rule 10b-5(a), I have held Jurberg acted with scienter. This satisfies the negligence requirement for § 17(a)(3). *See Ficken*, 546 F.3d at 52.

Accordingly, the SEC has established that as a matter of law Morrone, Jurberg, Orth, and Hamburger violated § 17(a)(3).

3. Materially False and Misleading Statements: Violation of § 17(a)(2) of the Securities Act and § 10(b) of the Exchange Act, and Rule 10b-5 Thereunder (Portions of Counts 1 and 3)

The SEC also alleges that Morrone, Jurberg, and Orth made materially false and misleading statements in violation of § 17(a)(2) of the Securities Act, § 10(b) of the Exchange Act, and Rule 10b-5(b) thereunder.

Section 17(a)(2) provides that

> [i]t shall be unlawful for any person in the offer or sale of any securities [through interstate commerce] . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

15 U.S.C. § 77q(a)(2).

Rule 10b-5(b), promulgated in furtherance of the prohibition in § 10(b) of the use or employment of "any manipulative or deceptive device or contrivance in contravention of" rules promulgated by the SEC, 15 U.S.C. § 78j(b), prohibits similar conduct. *See SEC* v. *Tambone (Tambone II)*, 597 F.3d 436, 443 (1st Cir. 2010) (en banc) ("[U]ntrue or misleading statements of material fact" prohibited under rule 10b-5(b) are "a specific subset of" "manipulative or deceptive device[s] or contrivance[s]" prohibited under § 10(b), and "making" them is specific subset of conduct that "use[s] or employ[s]" such devices). Specifically, Rule 10b-5(b) provides that "[i]t shall be unlawful for any person, directly or indirectly, . . . [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b-5(b).

Section 17(a)(2) and Rule 10b-5(b), while sharing the same general spirit and purpose, contain several important distinctions.

First, Rule 10b-5(b) applies to a more limited subset of statements: those that are *made* by the defendant rather than simply used or employed by the defendant. *See Tambone II*, 597 F.3d at 443-46. Under Rule 10b-5(b), it is unlawful "to *make* any untrue statement of a material fact." 17 C.F.R. § 240.10b-

5(b) (emphasis added). Conversely, under § 17(a)(2), it is unlawful "to obtain money or property *by means of* any untrue statement of a material fact." 15 U.S.C. § 77q(a)(2) (emphasis added). In *Tambone II*, 597 F.3d at 443-44, the First Circuit concluded that this is a meaningful distinction, and that one cannot "make" a statement as the term is contemplated in Rule 10b-5(b) merely by "us[ing] a statement created entirely by others." In contrast, § 17(a)(2) permits liability for "the 'use' of an untrue statement of material fact (regardless of who created or composed the statement)." *Tambone II*, 597 F.3d at 444.

Second, a violation of Rule 10b-5(b) requires scienter, whereas a violation of § 17(a)(2) does not. Under § 17(a)(2), "the SEC need show only that the defendants acted negligently." *See Tambone I*, 550 F.3d at 120, 123; *see Aaron*, 446 U.S. at 690-97. Under § 10(b) and Rule 10b-5, "the SEC must prove that defendants acted with intent, knowledge or a high degree of recklessness." *Tambone I,* 550 F.3d at 123.

Third, under § 17(a)(2), the SEC can seek to impose liability for a false or misleading statement made in an *offer* for sale of securities, whereas under Rule 10b-5(b), the transaction must have been consummated. *See id.* at 122.

All of these distinctions render Rule 10b-5(b) a much more limited vehicle for imposing liability than § 17(a)(2). "As a

result, if the SEC establishes liability under § 10(b) and Rule 10b-5(b), then the SEC has also established liability under § 17(a)(2), as long as it can establish that the defendants "obtained money or property" from the scheme." I begin, therefore, with the narrower provision.

a. Liability Under Rule 10b-5(b)

"To prove a violation of Section 10(b) and Rule 10b-5, the SEC must show that: (1) the defendant made a misrepresentation in connection with the purchase or sale of securities; (2) the misrepresentation was material, and (3) the defendant had the requisite scienter," that is, made the misrepresentation with intent, knowledge, or a high degree of recklessness. *Druffner*, 517 F. Supp. 2d at 508 (citing *Fife*, 311 F.3d at 9-10).

i. Morrone and Jurberg

1. Material Misrepresentations

The SEC presents argument regarding Morrone and Jurberg's purported material misrepresentations, but the specific misrepresentations attributed to Morrone and Jurberg occurred in 2004. Because of the five-year statute of limitations, any material misrepresentations made prior to September 10, 2007 cannot provide grounds for liability standing alone. Therefore, the SEC's motion to the extent it relies solely on pre-September 10, 2007 activities with respect to this portion of Count 3 will be denied. Nevertheless, I include the discussion below

regarding that activity because it bears on questions of knowledge and intent with respect to activities after September 10, 2007.[30]

At the investor conferences held in Syracuse in 2004 and in phone conversations during the same time period with investors Peter and Brenda Antonowicz, Morrone and Jurberg represented that they were working only for "sweat equity" or stock compensation, such that they themselves were invested in the financial success of the company, and that Bio Defense was using all of its investor funds to develop and build the company's product. There is no question that these statements were made by Morrone and Jurberg in connection with their efforts to sell Bio Defense securities.

The statements made by Morrone and Jurberg were false. From 2004 through 2010, Bio Defense saw its primary income in stock sales, did not earn a profit, and instead generated over $2 million in losses each year. Nonetheless, during this time period, Morrone and Jurberg were paid a percentage of the money received from stock sales. By the end of September 2004, Morrone and Jurberg's consulting companies had already received payments of $140,000 and $99,460, respectively, from Bio Defense. Not only were Morrone and Jurberg not working for

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[30] See *supra* note 21.

"sweat equity," but the funds the company received from investors were not going exclusively to product development.[31]

These statements were also material to the investors' decisions to purchase Bio Defense stock, and investors relied on the statements when deciding to purchase the securities.[32] A statement is material if there is "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." *Basic Inc.* v. *Levinson*, 485 U.S. 224, 231-32, (1988) (quoting *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976)). Although a reasonable shareholder might be skeptical of the veracity of a representation that *all* funds received from stock sales would be put toward product development, he or she would certainly consider this to be a strong indication of the company's investment in its product. Similarly, the representation that Morrone and Jurberg had placed such great faith in Bio Defense's success that they were willing to work for Bio Defense without

[31] To the extent the SEC suggests that these statements were false because well over half of investor funds were going to the overseas call centers, that fee arrangement was not in place in 2004 when these particular misrepresentations occurred.

[32] The SEC is not required to prove either attribution or reliance under either § 17(a) or § 10(b). *See Tambone II*, 597 F.3d at 456 (citing *SEC* v. *Wolfson*, 539 F.3d 1249, 1259-60 (10th Cir. 2008)). However, evidence of reliance can be helpful in establishing materiality and that the statement was made in connection with an actual sale of securities.

receiving compensation other than stock options, seems designed to encourage investment and would certainly play a role in encouraging a reasonable person to invest. Indeed, the Antonowiczes purchased Bio Defense stock on multiple occasions and considered these representations to be "significant factors" in their decision to buy the stock.

2. Scienter

As discussed above, Morrone and Jurberg contend, without reference to any evidentiary materials, that the SEC has not established scienter because it has not demonstrated that either defendant had the intent to deceive. Because there are two statements that the SEC has focused on, I will address each in turn.

First, I consider the statement that Morrone and Jurberg were personally invested in the company in the same way that investors were because they were paid solely through stock options. Throughout 2004, Morrone and Jurberg received cash commission payments based on the investor commitments. That is, they were paid cash, separate and apart from any stock option payments. Clearly, they knew that they were not being paid solely in "sweat equity." The defendants made these statements to instill a sense of camaraderie and trust with potential investors and, ultimately, to persuade investors to purchase stock. *See Ficken*, 546 F.3d at 51-52 (noting that "it is

unusual to grant summary judgment on scienter," but "may be appropriate if the nonmoving party rests merely upon conclusory allegations, improbable inferences, and unsupported speculation") (quoting *Medina-Munoz*, 896 F.2d at 8) (internal quotation marks omitted).

Secondly, as for the statement that Bio Defense was using all investor funds to finance product development, the SEC has not alleged or pointed to any evidence that Morrone and Jurberg knew that the company did not have other sources of revenue that it was using to pay their commissions. Therefore, the SEC has not established that Morrone and Jurberg knew that the full investor funds were not being used to finance product development and that they "consciously intended to defraud" investors in making this representation.[33] *See Fife*, 311 F.3d at 9. Whether they should have known, to the extent that their failure to know rose to the level of "extreme recklessness," would be a question for a reasonable fact finder. However, this question need not be presented to a jury because these misrepresentations to investors are no longer actionable due to the statute of limitations.

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[33] Indeed, there is some indication in Morrone's testimony that he did not know all the details of the company's financing.

ii. Orth

1. Material Misrepresentations

In 2010, in encouraging investment in the machine sales buy-back program, Orth made statements regarding the past and future sales of Bio Defense’s Mail Defender machine to Catalani, a prospective investor. In promoting this program, Orth represented that Bio Defense had already sold 175 machines, including to purchasers such as the United States Postal Service, United Parcel Service, and Federal Express, and that Bio Defense had orders for thousands more machines. Orth also represented that Catalani could purchase a specific machine that had already been sold to Morgan Stanley.

These statements were false. Bio Defense had sold approximately ten machines, had never sold a machine to Morgan Stanley, and did not have any purchase orders in place for future sales. The statements were also material to Catalani’s investment decision. Catalani informed Orth that he had concerns about having his investment and the return available within a year, and Orth used these false statements to assure Catalani that he would receive his return in a year or less. Orth’s representations of the certainty of the investment and the speed of the return were significant, if not determinative, factors in Catalani’s decision to invest in the buy-back program.

2. Scienter

The SEC has not provided direct evidence affirmatively establishing that Orth knew, at the time he made these statements, that they were false. However, it has established that Orth managed the buy-back program. That is, he was responsible for outreach to potential investors, in which he encouraged them to purchase Mail Defender machines outright that would eventually be "bought back" by Bio Defense once they found a purchaser, and the investor would recoup the money he or she spent plus another $10,000. Orth has invoked his Fifth Amendment privilege with respect to questions about Catalani and the buy-back program. Even so, it is clear that Orth knew by March 9, 2011, the day of his investigatory testimony, that Bio Defense had only over sold approximately 15-20 Mail Defender machines. While not enough to establish Orth knew this at the time of his representation to Catalani, the evidence in the record is strong enough that an adverse inference can be made that Orth knew, and declines to contest that he had known, that the statements he made about the past and future sales of the machines were false, and that he made them with the intent to defraud Catalani and induce him to buy into the program. *See Cochran*, 328 F.3d at 12 (facts not contested are considered admitted); *Unum Grp.*, 938 F. Supp. 2d at 184 (adverse inference, standing alone, cannot satisfy moving party's burden at summary

judgment, but may be permissible when joined by independent evidence).

Even without drawing that inference, Orth's representations evidence a high degree of recklessness. He worked for Bio Defense for years and ran the buy-back program. To the extent he may not have known how many machines Bio Defense had actually sold, that can only be due to willful ignorance on his part. To make representations to investors in order to induce them to invest, Orth either knew he was making false statements or was utterly reckless with regard to the truth. Accordingly, the SEC has established that there is no genuine dispute of material fact regarding the contention that Orth violated Rule 10b-5(b) in making materially false statements in connection to the sale of securities through the buy-back program to Catalani.

b. Liability Under § 17(a)(2)

To prove a violation of § 17(a)(2), the SEC must show that the defendants "have (1) directly or indirectly (2) obtained money or property (3) by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, such statement having been made (4) with negligence (5) in the offer or sale of any securities." *Tambone I*, 550 F.3d at 125.

The only element not addressed by the Rule 10b-5(b) analysis above is whether Orth "obtained money or property" by means of the false statements they made. The conclusion that the SEC has satisfied the scienter requirement "more than meets the negligence requirement of § 17(a)(2) . . . ." *Ficken*, 546 F.3d at 52.

Regardless of whether Orth was an officer of Bio Defense or simply an independent consultant, he obtained money by means of the fraud for his own benefit. His compensation for his work on behalf of Bio Defense was tied directly to the specific investments he solicited and obtained. This satisfies the "obtained money or property" requirement. *See SEC* v. *Stoker*, 865 F. Supp. 2d 457, 463 (S.D.N.Y. 2012) (discussing limited but different approaches to "obtained money or property" requirement under § 17(a)(2), and concluding that it is sufficient for the SEC to allege that defendant "obtained money or property for his employer while acting as its agent, or . . . to allege that [defendant] personally obtained money indirectly from the fraud.") Accordingly, the SEC has established that Orth is liable under § 17(a)(2) as well.[34]

[34] While this would be true for Morrone and Jurberg, too, the conduct on which the SEC relies to charge them falls outside the statute of limitations.

F. Control Person Liability (Count 7)

The SEC also asserts control person liability against Morrone pursuant to § 20(a) of the Exchange Act for Bio Defense's violation of § 10(b). To establish Morrone's liability under § 20, the SEC must establish "(i) an underlying violation of [Rule 10b-5] by the controlled entity . . . ; and (ii) control of the primary violator by the defendant."[35] *In re Stone & Webster, Inc., Sec. Litig.*, 414 F.3d 187, 194 (1st Cir. 2005). There is no scienter requirement. *Id.* A defendant who otherwise would be liable as a control person under this section can avoid liability by demonstrating that he or she "acted in good faith and did not directly or indirectly induce the act or acts constituting the violation . . . ." 15 U.S.C. § 78t(a).

1. Violation of § 10(b) and Rule 10b-5 by Bio Defense

The SEC contends that Bio Defense violated § 10(b) of the Exchange Act and Rule 10b-5 thereunder by hiring fundraising companies overseas to solicit potential investors, paying them exorbitant commissions, and then sending stock offering documents that did not disclose these fees to interested investors. Based on the analysis above regarding the individual

[35] Under § 20(a), as codified at 15 U.S.C. § 78t(a), "[e]very person who, directly or indirectly, controls any person liable under any provision of this chapter or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable . . . ."

defendants' liability under these provisions for substantially participating in a fraudulent or deceptive scheme of this nature, there is no genuine dispute that Bio Defense, as the entity employing these defendants and offering its stock for purchase through the overseas operations, also engaged in this scheme to defraud. By its default, Bio Defense is deemed to concede, at least as to liability, the material facts established in the record submitted by the SEC. *See SEC* v. *Tavella*, 77 F. Supp. 3d 353, 357-58 (S.D.N.Y. 2015).

2. Control of Bio Defense by Morrone

Morrone will only be liable for Bio Defense's violation – in addition to his own violation – if it can be established that he exercised control over Bio Defense and over Bio Defense's actions in relation to the deceptive scheme. "[A] control-person relationship exists whenever (i) the alleged control person actually exercised control over the general operations of the primary violator and (ii) the alleged control person possessed - but did not necessarily exercise — the power to determine the specific acts or omissions upon which the underlying violation is predicated." *Farley* v. *Henson*, 11 F.3d 827, 835 (8th Cir. 1993) (citation omitted); *In re Centennial Techs. Litig.*, 52 F. Supp. 2d 178, 186 (D. Mass. 1999) (adopting the *Farley* test). "Control" is defined by the regulations as "the possession, direct or indirect, of the power to direct or

cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." 17 C.F.R. § 230.405 (2018).

It is indisputable that Morrone exercised control over the actions of Bio Defense that furthered the overseas fundraising scheme, at least with respect to the EU and PT projects. He created the written materials with Hamburger that failed to disclose the proposed 75% commission fee that was known to him, he shipped offering materials to prospective investors, he received the completed stock subscription agreements back from the investors, and he ensured that the agreements were counter-signed by Lu and the stock certificates mailed out to the new investors.[36] In his capacity as the point of contact and overseer of Bio Defense's activities in relation to the scheme, he also assigned his niece to assist Hamburger and ensured that she was compensated for her work.

The SEC has not demonstrated, however, facts that establish that Morrone actually exercised control over the *general operations* of Bio Defense. The SEC asserts in its memorandum in support of its motion summary judgment that Morrone "ousted Lu from his position as Chief Executive Officer in July 2011," and

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[36] To the extent Morrone's argument that he relied on the advice of outside counsel is asserted as a defense against control person liability, that argument is rejected again, for the reasons discussed *supra*.

that this establishes Morrone's general exercise of control over the company. Morrone's testimony does not support this reading. Morrone explained that he and another individual approached Lu and suggested that he step down as Chief Executive Officer for some specific reasons apparently unrelated to the stock solicitation and sales activity. There is no indication that Morrone had the power to or did force Lu to step down, nor did Morrone replace Lu as Chief Executive Officer when he agreed to leave. In any event, Lu's tenure as CEO ended in 2011, which was *after* the period of securities violations in question, 2004-2010.[37] Morrone held a director-level title, but this alone is not enough to establish that he controlled the operations of Bio Defense. *Cf. CMKM Diamonds*, 729 F.3d at 1258 (making this point in the context of § 5 liability). Accordingly, the SEC has not satisfied a necessary element to establish control liability and is not entitled to summary judgment on this count.

G. Summary

In short, the record here contains sufficient evidence to meet the SEC's burden of persuasion as a matter of law regarding its summary judgment motions on all counts against Hamburger and Orth. The motion for summary judgment will be denied in part

[37] In its default judgment submission, the SEC did not seek control person as to Lu.

with respect Jurberg and Morrone.[38] The motions also will be denied with respect to Count Seven. Jurberg's cross-motion for summary judgment will be denied.

H. Relief

The SEC, as noted above, seeks relief from each of the individual defendants in this action in the form of (1) a permanent injunction against further violations of the federal securities laws; (2) disgorgement of ill-gotten gains, plus pre-judgment interest; and (3) a civil monetary penalty. With respect to Lu, Morrone, Jurberg, and Orth, all of whom were officers and/or directors of Bio Defense, the SEC seeks an order barring them from serving as officers/directors of a public company. Against Bio Defense itself, the SEC seeks both disgorgement of ill-gotten gains received as proceeds from the company's unregistered and fraudulent offerings and scheme to defraud and a civil monetary penalty. Finally, the SEC seeks an order that May's International disgorge all ill-gotten proceeds the company received from BioDefense's unregistered offerings and scheme to defraud.

1. Permanent Injunction

The SEC seeks a permanent injunction against further

[38] Because the denials as to these provisions do not, however, impact any relief the SEC seeks regarding Jurberg and Morrone, final judgment will now enter as to them.

violations of the federal securities laws against Lu, Morrone, Jurberg, Orth, and Hamburger. Section 20(b) of the Securities Act and Section 21(d)(1) of the Exchange Act authorize the SEC to seek these injunctions. 15 U.S.C. §§ 77t(b), 78u(d)(1). "An injunction is appropriate if the Court determines there is a reasonable likelihood that the defendant will violate the laws again in the future." *SEC* v. *Esposito*, 260 F. Supp. 3d 79, 93 (D. Mass. 2017) (quoting *Druffner*, 517 F. Supp. 2d at 513) (internal quotation marks omitted). "To determine whether the defendant is reasonably likely to violate the laws again in the future, the Court looks to 'whether a defendant's violation was isolated or part of a pattern, whether the violation was flagrant and deliberate or merely technical in nature, and whether the defendant's business will present opportunities to violate the law in the future.'" *Id.* at 93-94 (quoting *Druffner*, 517 F. Supp. 2d at 513). Courts also consider whether the defendant has recognized the wrongfulness of his conduct. *SEC* v. *Sargent*, 329 F.3d 34, 39 (1st Cir. 2003) (citation omitted).

The SEC contends that a permanent injunction is warranted because of the egregious nature of the defendants' conduct, the high degree of scienter, the repetitive nature of the violations, and the defendants' refusal to recognize the wrongfulness of their conduct.

As to Lu, Morrone, and Jurberg, the Texas State Securities Board sent them, and Bio Defense, cease and desist orders in March 2008 for offering and selling unregistered Bio Defense stock in Texas. This, in combination with the investigation conducted by the Commonwealth of Massachusetts, triggered Bio Defense’s shift to selling stock via its boiler-room scam overseas. In setting up the overseas scam, Lu, Morrone, and Jurberg hired Hamburger, who they knew had been convicted of conspiracy to commit securities fraud.

Once the overseas projects had been set up, all the officers of Bio Defense — Lu, Morrone, Jurberg, and Orth — participated in the knowing execution of the boiler-room scam that diverted over half of all money raised to the boiler-room call centers. In addition, they paid themselves, and Hamburger, a percentage of the money raised from investors. This conduct lasted over the course of two years.

Based on the nature of the defendants’ conduct, including their knowledge and the period of time during which they engaged in fraudulent activity, a permanent injunction against the individual defendants against any future violation of the securities laws is warranted. Accordingly, I substantially adopt the SEC’s proposed forms of order with respect to each of the individual defendants regarding injunction with the limited exception of the proposed judgment against Jurberg, because, as

I have concluded in Section II.E.1.b.ii. of this Memorandum, he is not liable under Count Three.

2. Disgorgement

The SEC next seeks disgorgement against each individual defendant to the extent they took payments on the sales of Bio Defense securities from September 10, 2007 forward. Disgorgement is a remedy that is meant to "deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *SEC* v. *First City Fin. Corp., Ltd*, 890 F.2d 1215, 1230 (D.C. Cir. 1989) (citations omitted). I have "broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged." *Esposito*, 260 F. Supp. 3d at 92 (quoting *Druffner*, 802 F. Supp. 2d at 297) (internal quotation marks omitted). It "need only be a reasonable approximation of profits causally connected to the violation." *SEC* v. *Happ*, 392 F.3d 12, 31 (1st Cir. 2004) (quoting *First City Fin. Corp.*, 890 F.2d at 1231) (internal quotation marks omitted). Moreover, "[p]rejudgment interest on disgorged profits is also appropriate in order to prevent 'defendants from enjoying an interest-free loan on their illicitly-obtained gains.'" *Esposito*, 260 F. Supp. 3d at 92 (quoting *SEC* v. *Levine*, 517 F. Supp. 2d 121, 141 (D.D.C. 2007)).

It is within the "broad discretion" of the court to determine whether to award prejudgment interest. *Druffner*, 517

F. Supp. 2d at 502, 512 (D. Mass. 2007) (citing *S.E.C.* v. *Sargent*, 329 F.3d 34, 41 n. 1 (1st Cir. 2003)). Awarding pre-judgment interest is favored as a means by which to make plaintiffs truly whole. Indeed, the Supreme Court has observed it has "consistently acknowledged that a monetary award does not fully compensate for an injury unless it includes an interest component." *Kansas* v. *Colorado*, 533 U.S. 1, 10 (2001) (adopting the Third Report of the Special Master,[39] which states "Prejudgment interest, as a legal matter, is intended to compensate injured parties both for the time value of the lost money as well as the effects of inflation"). Prejudgment interest is the "norm in federal litigation." *Id.* at *40 (citing *Matter of Oil Spill by the Amoco Cadiz*, 954 F. 2d 1279, 1331-32 (7th Cir. 1992)). That courts have widely adopted this practice in awarding damages is because prejudgment interest "simply is part of providing full compensation to the injured party." *Id.* (citing *West Virginia* v. *United States*, 479 U.S. 305, 310, n.2 (1987); *see also, City of Milwaukee* v. *Cement Division, Nat'l Gypsum, Co.*, 515 U.S. 189, 197 (1995) ("Prejudgment interest is not awarded as a penalty; it is merely an element of just compensation.").

[39] *Kansas* v. *Colorado*, No. 105, ORIGINAL, 2000 WL 34508307, at *41 (U.S. Aug. 31, 2000 (Special Master's Third Report).

This practice has been endorsed in the First Circuit in the context of securities law violations because awarding prejudgment interest "prevents defendants from profiting from [their] securities violations. An award of prejudgment interest is based on consideration of a variety of factors, including the remedial purpose of the statute involved, the goal of depriving culpable defendants of their unlawful gains, and unfairness to defendants." *See Druffner*, 517 F. Supp. 2d at 512 (citing *Sargent*, 329 F.3d at 40).

The individual defendants in this case all received transaction-based compensation in lieu of a salary for their work for Bio Defense, which was linked to a percentage of the investment money received by the company. In short, they all profited from their securities violations. Pre-judgment interest is necessary to prevent their further benefit from what would amount to an interest free loan and as a remedial measure for their individual and collective fraud.

The SEC specifically seeks disgorgement from the individual defendants based on the percentage of money that Bio Defense raised from investors and paid to the individual defendants. The SEC has submitted an undisputed declaration from a forensic accountant who has reviewed Bio Defense's records and bank records for the period from September 10, 2007 through February 2011, when Bio Defense stopped taking money from investors.

Based on the forensic accountant's review, during the relevant period: Orth was [redacted] in investment proceeds; Morrone was [redacted] in investment proceeds; Lu and the entity through which he did business, May's International, were paid $608,013 in investment proceeds (I will treat disgorgement of these payments as a joint and several obligation); Jurberg was [redacted] in investment proceeds; and Hamburger was [redacted] $[redacted] in investment proceeds.

Prejudgment interest on the disgorgement amounts is appropriate from each of these defendants. That calculation began on the date this case was filed, September 10, 2012. I conclude the Internal Revenue Service's method of calculating tax over-payments and under-payments is an appropriate manner to calculate pre-judgment interest. *See Druffner*, 517 F. Supp. 2d at 512 (citing *S.E.C.* v. *First Jersey Securities, Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996)) ("[c]ourts have approved the use of the IRS underpayment rate in connection with disgorgement").

The SEC also seeks disgorgement and pre-judgment interest from Bio Defense and May's International. Between September 10, 2007 and February 2011, Bio Defense raised $16,285,336 through its unlawful offerings and sales of securities to investors. As to May's International, it is a relief defendant and therefore is only liable to disgorge proceeds where it received ill-gotten funds and does not have any legitimate claim to those funds.

SEC v. *Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998). Here, May's International is in default, having offered no legitimate claim to the funds it was paid by Bio Defense. Between September 10, 2007 and February 2011, the SEC's expert calculated that Bio Defense paid May's International $608,013 for Lu's commissions on investor payments. For this reason, the separate final default judgments will treat the disgorgement obligation as joint and several.

3. Civil Monetary Penalties

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Remedies Act"), found at § 21(d)(3)(A) of the Exchange Act and § 20 of the Securities Act, gives the SEC authority to seek civil penalties for violations of the Securities Act and the Exchange Act. These penalties are broken up into three tiers, which set maximum amounts based on the nature of the conduct in the case. Here, the SEC seeks the third tier of civil monetary penalties because the violations of the Securities Act and Exchange Act involved fraud, deceit, and at minimum reckless disregard of the regulations, and the violations directly resulted in substantial losses to other persons. *See* 15 U.S.C. §§ 77t(d)(2), 78u(d)(3). According to the third-tier framework, the maximum penalty is the greater of $100,000 for a natural person or $500,000 for any other person,

or the gross amount of pecuniary gain to the defendants as a result of the violations. *Id.*

The SEC specifically requests that with regard to each individual defendant I impose the maximum penalty, meaning their gross pecuniary gains from the fraud. That is, the SEC seeks, on top of disgorgement, penalties in equivalent amounts to the disgorgement numbers, not including prejudgment interest.

There is no doubt that the third-tier framework should be applied to these defendants. Each of the individual defendants participated in the fraudulent overseas boiler-room scheme that assisted in Bio Defense raising more than $16 million from investors. Each of the individual defendants knew that over half of the money raised from investors was being diverted to the same call centers that were soliciting investments. That is, each of the individual defendants knew what the boiler-room scam really was. In light of this, I find the SEC's request for the maximum civil monetary penalty to be appropriate, and I adopt its proposed orders regarding the civil monetary penalties. Pre-judgment interest will not, however, be imposed as to the civil monetary penalties.[40]

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[40] A monetary penalty seeks to vindicate the public interest in assuring, at risk of sanction for violation, compliance with legal duties. As such it does not involve the time value of money until judgment is actually entered. By contrast, the time value of wrongfully retained and ultimately disgorged money is within the heartland of the pre-judgment interest concern. *Cf.*

4. Officer and Director Bar

Finally, the SEC seeks an order barring the individual defendants Lu, Morrone, Jurberg, and Orth from serving as officers or directors of public companies in the future. Courts have the authority to "prohibit, conditionally or unconditionally, and permanently or for such period of time as [they] shall determine, any person who violated [the anti-fraud provisions of securities laws] from acting as an officer or director of any [public company] if the person's conduct demonstrates unfitness to serve as an officer or director . . ." 15 U.S.C. §§ 77t(e), 78u(d)(2). "In determining whether to permanently enjoin a defendant from servicing [sic] as an officer or director of a public company, courts consider (1) the egregiousness of the underlying securities law violation, (2) whether defendant was a repeat offender, (3) defendants' [sic] role in the fraud[,] (4) defendant's degree of scienter, (5) defendant's economic stake in the fraud[,] and (6) the likelihood that misconduct will recur." *SEC* v. *Weed*, 315 F. Supp. 3d 667, 6776 (D. Mass. 2018) (citing *SEC v. Patel*, 61 F.3d 137, 141 (2d Cir. 1995)).

SEC v. *Esposito*, 260 F. Supp. 3d 79, 92-94 (D. Mass. 2017) (awarding disgorgement with pre-judgment interest, Tier III civil monetary penalties without pre-judgment interest, and a permanent injunction to enjoin further violations of securities laws); *SEC v. Tropikgadget FZE*, No. 15-cv-10543-ADE, 2016 WL 4555595, at *8-9 (D. Mass. Aug. 31, 2016) (same).

In this case, Lu, Morrone, Jurberg, and Orth were all officers of Bio Defense. In addition, Lu and Morrone were members of the Board of Directors. All four defendants participated in the overseas boiler-room fraud perpetrated on investors, in which well over half of investor money was diverted to the boiler-room operators. This scheme, which persisted over the course of two years, eventually resulted in losses of millions to the investors, and the defendants at issue here profited from the scheme—with each taking a portion of the investors' money. Thus, all four defendants participated in an ongoing fraudulent scheme, through which each had an economic stake and a high degree of scienter. As to the likelihood that the misconduct will recur, the SEC has not presented evidence of, for example, how the defendants are currently employed. Even so, the factors outlined above do not constitute a test, but are instead meant to guide me toward a reasoned decision regarding whether an officer/director bar is appropriate. In this case, I find that an officer/director bar is warranted; Lu, Morrone, Jurberg, and Orth are barred from holding an officer or director role in a public company.

III. CONCLUSION

For the reasons set forth above,

I GRANT in part and DENY in part the plaintiff's motion for summary judgment [Dkt. No. 77];

I DENY Defendant Jurberg's cross-motion for summary judgment [Dkt. No. 90];

I GRANT the plaintiff's motion for summary judgment against Defendant Hamburger [Dkt. No. 81];

I DENY Defendant Hamburger's motion to dismiss [Dkt. No. 126]; and

I DENY Defendant Jurberg's motion to dismiss [Dkt. No. 131].

I ORDER final default judgments as to Defendants Lu and May's International upon the SEC's application.

Final Judgments in accordance with this Memorandum and Order shall be issued separately as to each defendant.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BRETT HAMBURGER, Defendant.	)	CIVIL ACTION NO. 12-11669-DPW

FINAL JUDGMENT AS TO DEFENDANT BRETT HAMBURGER
September 6, 2019

WHEREAS, Plaintiff Securities and Exchange Commission ("Commission") filed a Complaint, and defendant Brett Hamburger ("Hamburger") answered the Complaint;

WHEREAS, the Commission moved for summary judgment on its claims against Hamburger, and the parties thereafter briefed and argued this motion; and

WHEREAS, the Court issued a Memorandum and Order granting the Commission's motion for summary judgment against Hamburger:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Hamburger is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange

Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud; or

(b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant Hamburger's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Hamburger or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Hamburger is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of

transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant Hamburger's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Hamburger or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Hamburger is permanently restrained and enjoined from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by using the mails, or any means or instrumentality of interstate commerce, to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities without being registered as a broker or dealer or associated with a registered broker or dealer in accordance with Section 15(b) of the Exchange Act, 15 U.S.C.§ 78o(b).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant Hamburger's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant Hamburger or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Hamburger is liable for disgorgement of $414,744.37, representing profits gained from his unlawful conduct, together with prejudgment interest thereon in the amount of $124,918.52, for a total of $539,662.89. Defendant shall satisfy this obligation by paying $539,662.89 to the Commission within 14 days after entry of this Final Judgment.

Defendant Hamburger may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Brett Hamburger as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission shall hold the funds (collectively, the "Fund") and may propose a plan to distribute the Fund subject to the Court's approval. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final

Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Hamburger shall pay a civil penalty in the amount of $414,744.37 to the Commission pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant Hamburger shall make this payment within 14 days after entry of this Final Judgment.

Defendant Hamburger may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant Hamburger may also pay by certified check, bank cashier's check, or United States postal money order payable to the Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Brett Hamburger as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant Hamburger shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant Hamburger relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Defendant Hamburger shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

United States Court of Appeals
For the First Circuit

No. 19-2043

SECURITIES & EXCHANGE COMMISSION

Plaintiff - Appellee

v.

BRETT HAMBURGER, d/b/a JCBH Consulting, LLC

Defendant - Third Party Plaintiff - Appellant

JONATHAN MORRONE, individually and d/b/a JM International, Inc.; Z. PAUL JURBERG, individually and d/b/a Brookline Capital Partners, Inc.; ANTHONY ORTH, individually and d/b/a Grand Traverse Equities, Inc.; MAY'S INTERNATIONAL CORPORATION

Defendants

BIO DEFENSE CORPORATION; MICHAEL LU, individually and d/b/a May's International Corporation

Defendants - Third Party Defendants

DAVID SMITH; ONEIGHTY C TECHNOLOGIES

Third Party Defendants

JUDGMENT

Entered: June 30, 2020
Pursuant to 1st Cir. R. 27.0(d)

On April 27, 2020, this court issued an order directing the appellant to either pay the $505.00 filing fee or to file a compliant request for in forma pauperis status with the district court. Appellant was notified that failure to take either action by May11, 2020 would result in this appeal being dismissed for lack of prosecution.

Appellant having failed to file a request for in forma pauperis status or the payment of the filing fee, it is hereby ordered that the above-captioned appeal be dismissed in accordance with 1st Cir. R. 45.0(a) and 3.0(b).

By the Court:

Maria R. Hamilton, Clerk

cc:
Tracey A. Hardin
Richard Mann Harper, II
Donald Campbell Lockhart
Jordan L. Shapiro
Theodore Weiman
Brett Hamburger

EXHIBIT 4

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Case Number: 3-19663

vs.

In the Matter of:
Hamburger, Brett

For:
U.S. Securities and Exchange Commission
100 F St NE
Washington, DC 20549

Received by Cavalier CPS to be served on **Brett Hamburger, 9784 Grand Verde Way, Apt. 602, Boca Raton, FL 33428**.

I, Mike Meyer, do hereby affirm that on the **14th day of February, 2020** at **12:36 pm, I:**

Served Cover Letter; Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Notice of Hearing; Administrative Proceedings Set Before the SEC; Formatting, Filing and Service Compliance Checklist; Attachment to Chirstine Hamburger as co-resident/wife of Brett Hamburger at 9784 Grand Verde Way, Apt. 602, Boca Raton, FL 33428, being of suitable age and discretion to accept service in the absence of Brett Hamburger. Upon information and belief, 9784 Grand Verde Way, Apt. 602, Boca Raton, FL 33428 is the usual place of abode of Brett Hamburger.

I am a natural person over the age of eighteen and am not a party to or otherwise interested in the subject matter in controversy. I am a private process server authorized to serve this process in accordance with relevant law. Under penalty of perjury, I declare that the foregoing is true and correct.

Feb. 14th, 2020

Mike Meyer — **Date**
Process Server

Cavalier CPS
823-C S King Street
Leesburg, VA 20175
(703) 431-7085

Our Job Serial Number: CAV-2020001640
Ref: BRO-54060

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EXHIBIT 5

CERTIFICATION OF A FINRA BUSINESS RECORD

I, Marcia E. Asquith, being first duly sworn, hereby declare, depose and state as follows:

1. I am the Senior Vice President and Corporate Secretary of the Financial Industry Regulatory Authority Inc. ("FINRA") and am familiar with and am a custodian of FINRA business records, including interpretations, policies and rules adopted by the FINRA Board of Governors.

2. Pursuant to the Exchange Act, FINRA has standards for the uniform licensing and registration of securities professionals. FINRA is required by statute to collect and maintain information reported on various registration forms, including information related to employment and termination of registered representatives, and does so in a computer database called Central Registration Depository ("CRD"). CRD was developed by FINRA and the securities commissions of the 50 states and contains registration information as well as regulatory and enforcement actions taken against securities industry personnel.

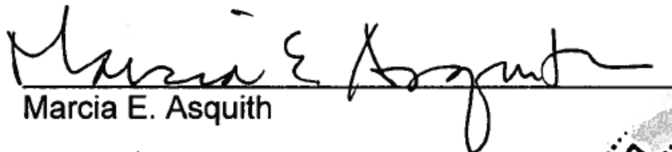
3. The CRD database provides securities regulators with a critical regulatory tool in overseeing the activities of brokers and in detecting potential regulatory problems before they evolve into significant investor losses.

4. Attached is a true, accurate and complete copy of the document listed below that was prepared, kept, and maintained in the ordinary course of FINRA's business at or near the time of the act, condition, or event:

a) Central Registration Depository record relating to Brett Howard Hamburger (CRD No. 1974666).

5. This record is a business record of FINRA as defined in Rule 803 of the Federal Rules of Evidence.

6. I declare, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is true of my own knowledge.



Washington, DC
February 19, 2014

Marcia E. Asquith

Subscribed and sworn to before me this 19th day of February, 2014.

Notary Public, District of Columbia

My commission expires: 5/31/2016

Notice

CRD® or IARD(TM) Information: This report contains information from the CRD (Central Registration Depository) system, or the IARD system (Investment Advisers Registration Depository), which are operated by FINRA, a national securities association registered under the Securities Exchange Act of 1934. The CRD system primarily contains information submitted on uniform broker-dealer and agent registration forms and certain other information related to registration and licensing. The IARD system primarily contains information submitted on uniform investment adviser and agent registration forms and certain other information related to registration and licensing. The information on Uniform Forms filed with the CRD or IARD is deemed to have been filed with each regulator with which the applicant seeks to be registered or licensed and shall be the joint property of the applicant and such regulators. The compilation constituting the CRD database as a whole is the property of FINRA. Neither FINRA nor a participating regulator warrants or guarantees the accuracy or the completeness of the CRD or IARD information. CRD information consists of reportable and non-reportable information.

FINRA operates the CRD system in its capacity as a registered national securities association and pursuant to an agreement with the North American Securities Administrators Association, Inc. (NASAA).

FINRA operates the IARD system as a vendor pursuant to a contract with the Securities and Exchange Commission and undertakings with NASAA and participating state regulators.

Reportable Information: Information that is required to be reported on the current version of the uniform registration forms.

Non-Reportable Information: Information that is not currently reportable on a uniform registration form. Information typically is not reportable because it is out-of-date; it was reported in error; or some change occurred either in the disposition of the underlying event after it was reported or in the question on the form that elicited the information. Although not currently reportable, this information was once reported on a uniform form and, consequently, may have become a state record. Users of this information should recognize that filers have no obligation to update non-reportable data; accordingly, it may not reflect changes that have occurred since it was reported.

Details for Request#: 13042021
Report: Snapshot - Individual
Requested By: APS

Parameter Name	Value
Request by CRD# or SSN:	CRD#
Individual CRD# or SSN	1974666
Include Personal Information?	No
Include All Registrations with Employments:	Both Current and Previous Employments
Include All Registrations for Current and/or Previous Employments with:	All Regulators
Include Professional Designations?	Yes
Include Employment History?	Yes
Include Other Business?	Yes
Include Exam Information?	Yes
Include Continuing Education Information? (CRD Only)	Yes
Include Filing History? (CRD Only)	Yes
Include Current Reportable Disclosure Information?	Yes
Include Regulator Archive and Z Record Information? (CRD Only)	Yes

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information
Composite Information

Full Legal Name	HAMBURGER, BRETT HOWARD
State of Residence	FL, NY
Active Employments	<<No Current Active Employments found for this Individual.>>
Reportable Disclosures?	Yes
Statutory Disqualification?	SDRQRSRVW
Registered With Multiple Firms?	No
Material Difference in Disclosure?	No

Registrations with Current Employer(s)

<<No Registrations with Current Employer(s) found for this Individual.>>

Registrations with Previous Employer(s)

From 09/22/1997 To 12/10/1997 HORNBLOWER & WEEKS, INC.(4683)
Reason for Termination Voluntary
Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	12/18/1997	T_NOREG	
NY	AG	12/18/1997	T_NOREG	

From 06/16/1997 To 07/21/1997 PCM SECURITIES LIMITED, L.P.(28761)
Reason for Termination Voluntary
Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	07/28/1997	T_NOREG	
FL	AG	07/28/1997	T_NOREG	
NY	AG	07/28/1997	T_NOREG	

From 12/04/1996 To 01/07/1997 STATE STREET SECURITIES, INC.(39025)
Reason for Termination Discharged
Termination Comment DIS; INVESTMENT PHILOSOPHY WAS NOT CONSISTENT

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	05/15/1997	T_NOREG	
NY	AG	05/15/1997	T_NOREG	

From 02/20/1996 To 10/23/1996 EURO-ATLANTIC SECURITIES INC.(21367)
Reason for Termination Voluntary
Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AK	AG	11/27/1996	TERMED	08/12/1996
AL	AG	11/27/1996	TERMED	08/09/1996
AZ	AG	11/27/1996	TERMED	07/25/1996
CA	AG	11/27/1996	TERMED	07/24/1996
CO	AG	11/27/1996	TERMED	08/19/1996
CT	AG	11/27/1996	TERMED	08/13/1996

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
DC	AG	11/27/1996	TERMED	08/07/1996
FINRA	GS	11/27/1996	TERMED	07/25/1996
FL	AG	11/27/1996	TERMED	07/30/1996
GA	AG	11/27/1996	TERMED	08/15/1996
IA	AG	11/27/1996	TERMED	07/26/1996
IL	AG	11/27/1996	TERMED	08/05/1996
IN	AG	11/27/1996	TERMED	08/16/1996
KS	AG	11/27/1996	TERMED	08/19/1996
KY	AG	11/27/1996	TERMED	07/25/1996
MA	AG	11/27/1996	TERMED	07/31/1996
MD	AG	11/27/1996	TERMED	07/30/1996
MI	AG	11/27/1996	TERMED	08/26/1996
MN	AG	11/27/1996	TERMED	07/29/1996
MO	AG	11/27/1996	TERMED	07/26/1996
NC	AG	11/27/1996	TERMED	08/28/1996
NE	AG	11/27/1996	TERMED	07/30/1996
NH	AG	11/27/1996	T_NOREG	
NJ	AG	11/27/1996	TERMED	07/29/1996
NV	AG	11/27/1996	TERMED	07/24/1996
NY	AG	11/27/1996	TERMED	08/09/1996
OH	AG	11/27/1996	TERMED	07/24/1996
OK	AG	11/27/1996	TERMED	07/30/1996
PA	AG	11/27/1996	TERMED	07/25/1996
RI	AG	11/27/1996	TERMED	08/09/1996
SC	AG	11/27/1996	TERMED	10/03/1996
SD	AG	11/27/1996	T_NOREG	
TN	AG	11/27/1996	TERMED	08/12/1996
TX	AG	11/27/1996	T_NOREG	
UT	AG	11/27/1996	TERMED	07/25/1996
VA	AG	11/27/1996	TERMED	07/26/1996
VT	AG	11/27/1996	TERMED	07/29/1996
WA	AG	11/27/1996	TERMED	10/02/1996
WI	AG	11/27/1996	TERMED	07/30/1996
WY	AG	11/27/1996	TERMED	08/02/1996

From 10/02/1995 To 01/15/1996 WORLDCO, L.L.C.(24673)

Reason for Termination Voluntary

Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	01/29/1996	T_NOREG	
NY	AG	01/29/1996	T_NOREG	

From 03/13/1995 To 09/19/1995 LA JOLLA CAPITAL CORPORATION(24341)

Reason for Termination Voluntary

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Registrations with Previous Employer(s)

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	10/09/1995	TERMED	04/21/1995
FINRA	GP	10/09/1995	T_NOREG	
FINRA	GS	10/09/1995	TERMED	04/24/1995
NY	AG	10/09/1995	TERMED	05/02/1995

From 10/13/1994 To 10/31/1994 CORPORATE SECURITIES GROUP, INC.(11025)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	11/02/1994	T_NOREG	
CT	AG	11/02/1994	T_NOREG	
FINRA	GS	11/02/1994	T_NOREG	
FL	AG	11/02/1994	T_NOREG	
GA	AG	11/02/1994	T_NOREG	
IL	AG	11/02/1994	T_NOREG	
MA	AG	11/02/1994	T_NOREG	
MI	AG	11/02/1994	T_NOREG	
NJ	AG	11/02/1994	T_NOREG	
NY	AG	11/02/1994	T_NOREG	
TN	AG	11/02/1994	T_NOREG	
TX	AG	11/02/1994	T_NOREG	

From 10/01/1993 To 05/01/1994 INVESTORS ASSOCIATES, INC.(958)

Reason for Termination Discharged

Termination Comment DIS; LEFT UNSECURED DEBITS OWES THE FIRM MONEY.

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AL	AG	06/10/1994	TERMED	01/01/1994
CA	AG	06/10/1994	TERMED	12/21/1993
CO	AG	06/10/1994	TERMED	01/01/1994
CT	AG	06/10/1994	TERMED	01/01/1994
DC	AG	06/10/1994	TERMED	01/27/1994
FINRA	GS	06/10/1994	TERMED	12/21/1993
FL	AG	06/10/1994	TERMED	01/07/1994
GA	AG	06/10/1994	TERMED	01/01/1994
HI	AG	06/10/1994	TERMED	02/08/1994
IL	AG	06/10/1994	TERMED	01/01/1994
KY	AG	06/10/1994	TERMED	01/03/1994
LA	AG	06/10/1994	TERMED	01/12/1994
MA	AG	06/10/1994	TERMED	01/01/1994
MD	AG	06/10/1994	TERMED	01/01/1994
MI	AG	06/10/1994	TERMED	01/03/1994
MN	AG	06/10/1994	TERMED	01/03/1994
NC	AG	06/10/1994	TERMED	01/18/1994

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
NJ	AG	06/10/1994	TERMED	01/07/1994
NV	AG	06/10/1994	TERMED	01/01/1994
NY	AG	06/10/1994	TERMED	12/21/1993
OH	AG	06/10/1994	TERMED	01/18/1994
PA	AG	06/10/1994	TERMED	01/01/1994
SC	AG	06/10/1994	TERMED	01/05/1994
TX	AG	06/10/1994	TERMED	01/04/1994
VA	AG	06/10/1994	TERMED	01/03/1994
WA	AG	06/10/1994	TERMED	01/01/1994
WI	AG	06/10/1994	TERMED	02/08/1994

From 07/01/1993 To 09/01/1993 FIRST HANOVER SECURITIES, INC.(14469)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AL	AG	09/20/1993	TERMED	08/05/1993
CA	AG	09/20/1993	TERMED	07/24/1993
CO	AG	09/20/1993	TERMED	07/26/1993
CT	AG	09/20/1993	TERMED	08/25/1993
DC	AG	09/20/1993	TERMED	08/18/1993
DE	AG	09/20/1993	TERMED	07/26/1993
FINRA	GS	09/20/1993	TERMED	07/26/1993
FL	AG	09/20/1993	TERMED	07/29/1993
GA	AG	09/20/1993	TERMED	08/24/1993
IL	AG	09/20/1993	TERMED	08/02/1993
LA	AG	09/20/1993	T_NOREG	
MA	AG	09/20/1993	TERMED	08/10/1993
MD	AG	09/20/1993	TERMED	07/28/1993
MI	AG	09/20/1993	TERMED	08/02/1993
MN	AG	09/20/1993	TERMED	07/27/1993
MO	AG	09/20/1993	TERMED	07/26/1993
NC	AG	09/20/1993	TERMED	08/31/1993
NJ	AG	09/20/1993	TERMED	07/28/1993
NV	AG	09/20/1993	TERMED	07/27/1993
NY	AG	09/20/1993	TERMED	08/24/1993
OH	AG	09/20/1993	TERMED	07/26/1993
PA	AG	09/20/1993	TERMED	07/27/1993
SC	AG	09/20/1993	TERMED	09/16/1993
TN	AG	09/20/1993	TERMED	08/26/1993
TX	AG	09/20/1993	TERMED	07/26/1993
VA	AG	09/20/1993	TERMED	07/26/1993

From 04/01/1993 To 07/01/1993 DUKE & CO., INC.(8035)

Reason for Termination Voluntary

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Registrations with Previous Employer(s)

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	07/23/1993	TERMED	05/05/1993
CT	AG	07/23/1993	TERMED	05/19/1993
DC	AG	07/23/1993	TERMED	05/07/1993
FINRA	GS	07/23/1993	TERMED	05/05/1993
FL	AG	07/23/1993	TERMED	05/11/1993
GA	AG	07/23/1993	TERMED	05/20/1993
IL	AG	07/23/1993	TERMED	05/11/1993
LA	AG	07/23/1993	T_NOREG	
MA	AG	07/23/1993	TERMED	05/25/1993
MD	AG	07/23/1993	TERMED	05/11/1993
MI	AG	07/23/1993	TERMED	05/20/1993
MN	AG	07/23/1993	TERMED	05/20/1993
NJ	AG	07/23/1993	TERMED	05/06/1993
NY	AG	07/23/1993	TERMED	05/18/1993
PA	AG	07/23/1993	TERMED	05/07/1993
SC	AG	07/23/1993	TERMED	05/27/1993
TX	AG	07/23/1993	TERMED	05/06/1993
VA	AG	07/23/1993	TERMED	05/05/1993

From 04/19/1993 To 05/01/1993 ELLIOT, ALLEN & CO., INC.(8035)

Reason for Termination Unknown Conversion

Termination Comment

<<No Registrations with Previous Employer(s) found for this Individual.>>

From 05/01/1992 To 10/01/1992 GKN SECURITIES CORP.(19415)

Reason for Termination Voluntary

Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	10/09/1992	TERMED	06/24/1992
CO	AG	10/09/1992	TERMED	08/26/1992
CT	AG	10/09/1992	TERMED	07/01/1992
DC	AG	10/09/1992	TERMED	09/30/1992
FINRA	GS	10/09/1992	TERMED	06/24/1992
FL	AG	10/09/1992	TERMED	07/02/1992
IL	AG	10/09/1992	TERMED	08/26/1992
IN	AG	10/09/1992	TERMED	09/04/1992
LA	AG	10/09/1992	T_NOREG	
MA	AG	10/09/1992	TERMED	09/09/1992
MD	AG	10/09/1992	TERMED	06/29/1992
MI	AG	10/09/1992	TERMED	09/02/1992
NJ	AG	10/09/1992	TERMED	07/02/1992
NV	AG	10/09/1992	TERMED	09/04/1992
NY	AG	10/09/1992	TERMED	06/25/1992

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
OH	AG	10/09/1992	TERMED	06/24/1992
PA	AG	10/09/1992	TERMED	06/29/1992
RI	AG	10/09/1992	TERMED	08/26/1992
VA	AG	10/09/1992	TERMED	08/26/1992

From 01/01/1991 To 02/01/1991 GRUNTAL & CO. INCORPORATED(372)

Reason for Termination Permitted to Resign

Termination Comment Permitted to Resign

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AR	AG	02/22/1991	T_NOREG	
AZ	AG	02/22/1991	T_NOREG	
CA	AG	02/22/1991	T_NOREG	
CO	AG	02/22/1991	T_NOREG	
CT	AG	02/22/1991	T_NOREG	
DC	AG	02/22/1991	TERMED	02/08/1991
DE	AG	02/22/1991	T_NOREG	
FINRA	GS	02/22/1991	T_NOREG	
FL	AG	02/22/1991	T_NOREG	
GA	AG	02/22/1991	T_NOREG	
IN	AG	02/22/1991	T_NOREG	
MA	AG	02/22/1991	T_NOREG	
MD	AG	02/22/1991	T_NOREG	
MI	AG	02/22/1991	T_NOREG	
MS	AG	02/22/1991	T_NOREG	
NC	AG	02/22/1991	T_NOREG	
NE	AG	02/22/1991	T_NOREG	
NH	AG	02/22/1991	T_NOREG	
NJ	AG	02/22/1991	T_NOREG	
NM	AG	02/22/1991	T_NOREG	
NY	AG	02/22/1991	T_NOREG	
NYSE	GS	02/22/1991	T_NOREG	
NYSE-MKT	GS	02/22/1991	T_NOREG	
OH	AG	02/22/1991	T_NOREG	
OK	AG	02/22/1991	T_NOREG	
OR	AG	02/22/1991	T_NOREG	
PA	AG	02/22/1991	T_NOREG	
SC	AG	02/22/1991	T_NOREG	
TN	AG	02/22/1991	T_NOREG	
TX	AG	02/22/1991	T_NOREG	
UT	AG	02/22/1991	T_NOREG	
VA	AG	02/22/1991	T_NOREG	
VT	AG	02/22/1991	T_NOREG	
WA	AG	02/22/1991	T_NOREG	
WI	AG	02/22/1991	T_NOREG	

Individual **1974666 - HAMBURGER, BRETT HOWARD**

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
WY	AG	02/22/1991	T_NOREG	

From 12/01/1990 To 01/01/1991 PRUDENTIAL-BACHE SECURITIES INC.(7471)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AR	AG	01/15/1991	TERMED	01/14/1991
AZ	AG	01/15/1991	TERMED	01/07/1991
CA	AG	01/15/1991	TERMED	01/07/1991
CO	AG	01/15/1991	TERMED	01/07/1991
CT	AG	01/15/1991	TERMED	01/07/1991
FINRA	GS	01/15/1991	TERMED	01/07/1991
FL	AG	01/15/1991	TERMED	01/10/1991
MD	AG	01/15/1991	TERMED	01/07/1991
MI	AG	01/15/1991	TERMED	01/08/1991
MN	AG	01/15/1991	TERMED	01/08/1991
MS	AG	01/15/1991	TERMED	01/08/1991
NC	AG	01/15/1991	TERMED	01/07/1991
NE	AG	01/15/1991	TERMED	01/07/1991
NJ	AG	01/15/1991	TERMED	01/07/1991
NY	AG	01/15/1991	TERMED	01/07/1991
NYSE	GS	01/15/1991	TERMED	01/07/1991
NYSE-MKT	GS	01/15/1991	TERMED	01/07/1991
OH	AG	01/15/1991	TERMED	01/08/1991
OK	AG	01/15/1991	TERMED	01/10/1991
OR	AG	01/15/1991	TERMED	01/07/1991
PA	AG	01/15/1991	TERMED	01/07/1991
SC	AG	01/15/1991	T_NOREG	
TN	AG	01/15/1991	TERMED	01/08/1991
TX	AG	01/15/1991	TERMED	01/09/1991
VA	AG	01/15/1991	TERMED	01/08/1991
WA	AG	01/15/1991	TERMED	01/07/1991
WI	AG	01/15/1991	TERMED	01/14/1991
WY	AG	01/15/1991	TERMED	01/09/1991

From 07/01/1990 To 11/01/1990 LEHMAN BROTHERS INC.(7506)

Reason for Termination Other

Termination Comment OTH; AMENDMENT TO FOLLOW

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AK	AG	11/24/1990	TERMED	03/13/1990
AL	AG	11/24/1990	TERMED	03/13/1990
AR	AG	11/24/1990	TERMED	03/13/1990
AZ	AG	11/24/1990	TERMED	03/13/1990
CA	AG	11/24/1990	TERMED	03/13/1990

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CO	AG	11/24/1990	TERMED	03/13/1990
CT	AG	11/24/1990	TERMED	03/06/1990
DC	AG	11/24/1990	TERMED	03/14/1990
DE	AG	11/24/1990	TERMED	03/06/1990
FINRA	GS	11/24/1990	TERMED	03/06/1990
FL	AG	11/24/1990	TERMED	03/06/1990
GA	AG	11/24/1990	TERMED	03/13/1990
HI	AG	11/24/1990	TERMED	03/13/1990
IA	AG	11/24/1990	TERMED	03/14/1990
ID	AG	11/24/1990	TERMED	03/14/1990
IL	AG	11/24/1990	TERMED	03/06/1990
IN	AG	11/24/1990	TERMED	03/13/1990
KS	AG	11/24/1990	TERMED	03/13/1990
KY	AG	11/24/1990	TERMED	03/13/1990
LA	AG	11/24/1990	TERMED	03/14/1990
MA	AG	11/24/1990	TERMED	03/06/1990
MD	AG	11/24/1990	TERMED	03/06/1990
ME	AG	11/24/1990	TERMED	03/15/1990
MI	AG	11/24/1990	TERMED	03/06/1990
MN	AG	11/24/1990	TERMED	03/16/1990
MO	AG	11/24/1990	TERMED	03/13/1990
MS	AG	11/24/1990	TERMED	03/14/1990
MT	AG	11/24/1990	TERMED	03/14/1990
NC	AG	11/24/1990	TERMED	03/13/1990
ND	AG	11/24/1990	TERMED	03/16/1990
NE	AG	11/24/1990	TERMED	03/13/1990
NH	AG	11/24/1990	TERMED	03/13/1990
NJ	AG	11/24/1990	TERMED	03/06/1990
NM	AG	11/24/1990	TERMED	03/13/1990
NV	AG	11/24/1990	TERMED	03/13/1990
NY	AG	11/24/1990	TERMED	03/06/1990
NYSE	GS	11/24/1990	TERMED	03/06/1990
NYSE-MKT	GS	11/24/1990	TERMED	03/16/1990
OH	AG	11/24/1990	TERMED	03/06/1990
OK	AG	11/24/1990	TERMED	03/13/1990
OR	AG	11/24/1990	TERMED	03/13/1990
PA	AG	11/24/1990	TERMED	03/06/1990
PR	AG	11/24/1990	TERMED	03/13/1990
RI	AG	11/24/1990	TERMED	03/06/1990
SC	AG	11/24/1990	TERMED	03/13/1990
SD	AG	11/24/1990	TERMED	03/14/1990
TN	AG	11/24/1990	TERMED	03/14/1990
TX	AG	11/24/1990	TERMED	03/14/1990

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
UT	AG	11/24/1990	TERMED	03/13/1990
VA	AG	11/24/1990	TERMED	03/06/1990
VT	AG	11/24/1990	TERMED	03/13/1990
WA	AG	11/24/1990	TERMED	03/13/1990
WI	AG	11/24/1990	TERMED	03/14/1990
WV	AG	11/24/1990	TERMED	03/15/1990
WY	AG	11/24/1990	TERMED	03/16/1990

From 02/01/1990 To 07/01/1990 SHEARSON LEHMAN HUTTON INC.(7506)

Reason for Termination Unknown Conversion

Termination Comment

<<No Registrations with Previous Employer(s) found for this Individual.>>

From 01/01/1990 To 02/01/1990 VANDERBILT SECURITIES, INC.(14280)

Reason for Termination Other

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	04/07/1990	TERMED	02/08/1990
CT	AG	04/07/1990	TERMED	02/08/1990
DC	AG	04/07/1990	TERMED	02/09/1990
DE	AG	04/07/1990	TERMED	02/08/1990
FINRA	GS	04/07/1990	TERMED	02/06/1990
FL	AG	04/07/1990	TERMED	02/12/1990
IL	AG	04/07/1990	TERMED	02/08/1990
MA	AG	04/07/1990	TERMED	02/08/1990
MD	AG	04/07/1990	TERMED	02/08/1990
MI	AG	04/07/1990	TERMED	02/20/1990
NJ	AG	04/07/1990	TERMED	02/09/1990
NY	AG	04/07/1990	TERMED	02/06/1990
OH	AG	04/07/1990	TERMED	02/09/1990
PA	AG	04/07/1990	TERMED	02/06/1990
RI	AG	04/07/1990	TERMED	02/14/1990
VA	AG	04/07/1990	TERMED	02/15/1990

From 06/01/1989 To 01/01/1990 J. T. MORAN & CO., INC.(15655)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	02/14/1990	TERMED	09/06/1989
CT	AG	02/14/1990	TERMED	09/06/1989
DC	AG	02/14/1990	TERMED	01/19/1990
DE	AG	02/14/1990	TERMED	09/12/1989
FINRA	GS	02/14/1990	TERMED	08/31/1989
FL	AG	02/14/1990	TERMED	01/09/1990
GA	AG	02/14/1990	TERMED	01/13/1990

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
IA	AG	02/14/1990	TERMED	01/18/1990
IL	AG	02/14/1990	TERMED	09/06/1989
MA	AG	02/14/1990	TERMED	09/12/1989
MD	AG	02/14/1990	TERMED	09/06/1989
MI	AG	02/14/1990	TERMED	09/11/1989
MN	AG	02/14/1990	TERMED	01/18/1990
NC	AG	02/14/1990	TERMED	01/16/1990
NJ	AG	02/14/1990	TERMED	09/06/1989
NY	AG	02/14/1990	TERMED	08/31/1989
PA	AG	02/14/1990	TERMED	09/06/1989
TX	AG	02/14/1990	TERMED	01/15/1990
VA	AG	02/14/1990	TERMED	09/07/1989

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information
Professional Designations

<<No Professional Designations found for this Individual.>>

Employment History

From		To			
From	09/1997	To	12/1997	**Name**	HORNBLOWER & WEEKS, INC.
				Location	NEW YORK, NY
				Position	NOT PROVIDED
				Investment Related	Yes
From	01/1997	To	08/1997	**Name**	BHH CONSULTING
				Location	LONG BEACH, NY
				Position	PRESIDENT - President
				Investment Related	No
From	06/1997	To	07/1997	**Name**	PCM SECURITIES LIMITED, L.P.
				Location	BOCA RATON, FL
				Position	NOT PROVIDED
				Investment Related	Yes
From	12/1996	To	01/1997	**Name**	STATE STREET SECURITIES, INC.
				Location	DALLAS, TX
				Position	NOT PROVIDED
				Investment Related	Yes
From	08/1996	To	12/1996	**Name**	UNEMPLOYED
				Location	NOT GIVEN
				Position	OTHER - NOT GIVEN
				Investment Related	No
From	02/1996	To	10/1996	**Name**	EURO-ATLANTIC SECURITIES INC.
				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	10/1995	To	01/1996	**Name**	WORLDCO, L.L.C.
				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	03/1995	To	09/1995	**Name**	PACIFIC CORTEZ SECURITIES INCORPORATED
				Location	NEW YORK, NY
				Position	BROKER - Broker

Administrative Information
Employment History

				Investment Related	Yes
From	10/1994	To	03/1995	**Name**	UNEMPLOYED
				Location	NOT GIVEN
				Position	UNEMPLOYED - Unemployed
				Investment Related	No
From	05/1994	To	12/1994	**Name**	BOULEVARD PROPERTIES
				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	No
From	10/1994	To	10/1994	**Name**	CORPORATE SECURITIES GROUP, INC.
				Location	NEW YORK CITY, NY
				Position	NOT PROVIDED
				Investment Related	Yes
From	10/1993	To	05/1994	**Name**	INVESTORS ASSOCIATES, INC.
				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	07/1993	To	09/1993	**Name**	FIRST HANOVER SECURITIES, INC.
				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	04/1993	To	07/1993	**Name**	DUKE & CO., INC.
				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	04/1993	To	05/1993	**Name**	ELLIOT, ALLEN & CO., INC.
				Location	NEW YORK, NY
				Position	NOT PROVIDED
				Investment Related	Yes
From	10/1992	To	04/1993	**Name**	CARLTON PROPERTIES
				Location	GREAT NECK, NY
				Position	OTHER - SALE ASST
				Investment Related	No

Individual **1974666 - HAMBURGER, BRETT HOWARD**

Administrative Information
Employment History

From	05/1992	To	10/1992	**Name**	GKN SECURITIES CORP.
				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	03/1991	To	05/1992	**Name**	ACS INC.
				Location	NEW YORK, NY
				Position	VICE_PRESIDENT - Vice President
				Investment Related	No
From	02/1991	To	03/1991	**Name**	UNEMPLOYED
				Location	ALT BEACH, NY
				Position	UNEMPLOYED - Unemployed
				Investment Related	No
From	01/1991	To	02/1991	**Name**	GRUNTAL & CO. INCORPORATED
				Location	PALM BEACH, FL
				Position	BROKER - Broker
				Investment Related	Yes
From	12/1990	To	01/1991	**Name**	PRUDENTIAL-BACHE SECURITIES INC.
				Location	FT. LAUDERDALE, FL
				Position	OTHER - ACCT. OPENING
				Investment Related	Yes
From	11/1990	To	12/1990	**Name**	UNEMPLOYED
				Location	ALT BEACH, NY
				Position	UNEMPLOYED - Unemployed
				Investment Related	No
From	07/1990	To	11/1990	**Name**	LEHMAN BROTHERS INC.
				Location	LOS ANGELOS, CA
				Position	BROKER - Broker
				Investment Related	Yes
From	02/1990	To	07/1990	**Name**	SHEARSON LEHMAN HUTTON INC.
				Location	NEW YORK, NY
				Position	OTHER - ACCT. OPENER
				Investment Related	Yes
From	01/1990	To	02/1990	**Name**	VANDERBILT SECURITIES, INC.

Administrative Information
Employment History

				Location	NEW YORK, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	06/1989	To	01/1990	**Name**	J. T. MORAN & CO., INC.
				Location	GARDEN CITY, NY
				Position	BROKER - Broker
				Investment Related	Yes
From	09/1986	To	07/1989	**Name**	M.J. RAINES
				Location	GREAT NECK, NY
				Position	OTHER - REAL ESTATE SALES ASST.
				Investment Related	No
From	01/1989	To	06/1989	**Name**	NASSAU COMMUNTIY COLLEGE
				Location	GARDEN CITY, NY
				Position	STUDENT - Student
				Investment Related	No
From	09/1988	To	01/1989	**Name**	SANTA FE COMMUNITY COLLEGE
				Location	GAINSVILLE, NY
				Position	STUDENT - Student
				Investment Related	No
From	09/1982	To	08/1988	**Name**	LAWRENCE HIGH SCHOOL
				Location	CEDARHURST, WY
				Position	STUDENT - Student
				Investment Related	No

Office of Employment History

From 09/1997 To 12/1997

Name HORNBLOWER & WEEKS, INC.(4683)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	09/22/1997	12/10/1997	Located At

Address 110 WALL ST., 21ST FLOOR
NEW YORK, NY 10005

From 06/1997 To 07/1997

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Office of Employment History

Name PCM SECURITIES LIMITED, L.P.(28761)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		003	No	No	06/16/1997	07/21/1997	Located At

Address 1515 SOUTH FEDERAL HWY, SUITE 302
BOCA RATON, FL 33432

From 12/1996 To 01/1997

Name STATE STREET SECURITIES, INC.(39025)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		2NY	No	No	12/04/1996	01/07/1997	Located At

Address 9400 N. CENTRAL EXPRESSWAY, SUITE 305
DALLAS, TX 75231

From 02/1996 To 10/1996

Name EURO-ATLANTIC SECURITIES INC.(21367)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	02/20/1996	10/23/1996	Located At

Address 30 BROAD 17TH FLOOR
NEW YORK, NY 10005

From 10/1995 To 01/1996

Name WORLDCO, L.L.C.(24673)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	10/02/1995	01/15/1996	Located At

Address 110 WALL ST
NEW YORK, NY 10005

From 03/1995 To 09/1995

Name LA JOLLA CAPITAL CORPORATION(24341)

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Office of Employment History

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		NY6	No	No	03/13/1995	09/19/1995	Located At

Address 57 W. 38TH ST, 6TH FL
NEW YORK, NY 10018

From 10/1994 To 10/1994

Name CORPORATE SECURITIES GROUP, INC.(11025)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	10/13/1994	10/31/1994	Located At

Address 950 THIRD AVENUE 28TH FLOOR
NEW YORK CITY, NY 10022

From 10/1993 To 05/1994

Name INVESTORS ASSOCIATES, INC.(958)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		HWF	No	No	10/01/1993	05/01/1994	Located At

Address 100 WALL ST 15TH FL
NEW YORK, NY 10005

From 07/1993 To 09/1993

Name FIRST HANOVER SECURITIES, INC.(14469)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	07/01/1993	09/01/1993	Located At

Address 100 WALL STREET
NEW YORK, NY 10005

From 04/1993 To 07/1993

Name DUKE & CO., INC.(8035)

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information

Office of Employment History

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	04/01/1993	07/01/1993	Located At

Address 461 FIFTH AVENUE
NEW YORK, NY 10017

From 04/1993 To 05/1993

Name ELLIOT, ALLEN & CO., INC.(8035)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	04/19/1993	05/01/1993	Located At

Address 461 FIFTH AVENUE
NEW YORK, NY 10017

From 05/1992 To 10/1992

Name GKN SECURITIES CORP.(19415)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	05/01/1992	10/01/1992	Located At

Address 61 BROADWAY, 12TH FLOOR
NEW YORK, NY 10006

From 01/1991 To 02/1991

Name GRUNTAL & CO. INCORPORATED(372)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		410	No	No	01/01/1991	02/01/1991	Located At

Address 120 NORTH COUNTY ROAD
PALM BEACH, FL 334809

From 12/1990 To 01/1991

Name PRUDENTIAL-BACHE SECURITIES INC.(7471)

Independent Contractor No

Individual 1974666 - HAMBURGER, BRETT HOWARD

Administrative Information
Office of Employment History

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		910-YGFO	No	No	12/01/1990	01/01/1991	Located At

Address 6550 N. FEDERAL HIGHWAY SUITE 500
FT. LAUDERDALE, FL 33308

From 07/1990 To 11/1990

Name LEHMAN BROTHERS INC.(7506)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		00556	No	No	07/01/1990	11/01/1990	Located At

Address 515 S. FIGUEROA STREET
LOS ANGELOS, CA 90071

From 02/1990 To 07/1990

Name SHEARSON LEHMAN HUTTON INC.(7506)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		00556	No	No	02/01/1990	07/01/1990	Located At

Address
NEW YORK, NY

From 01/1990 To 02/1990

Name VANDERBILT SECURITIES, INC.(14280)

Independent Contractor No

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		LI	No	No	01/01/1990	02/01/1990	Located At

Address 43 BROAD ST.
NEW YORK, NY 10004

From 06/1989 To 01/1990

Name J. T. MORAN & CO., INC.(15655)

Independent Contractor No

Individual **1974666 - HAMBURGER, BRETT HOWARD**

Administrative Information

Office of Employment History

Office of Employment Address

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	06/01/1989	01/01/1990	Located At

Address 107 CHARLES LINDBERGH BLVD.
GARDEN CITY, NY 11530

Other Business

<<No Other Business found for this Individual.>>

Exam Appointments

<<No Exam Appointments found for this Individual.>>

Exam History

Exam	Enrollment ID	Exam Status	Status Date	Exam Date	Grade	Score	Window Dates
S7	19830780	Official Result	08/19/1989	08/19/1989	Passed	77	-
S24	19830778	Official Result	08/02/1995	08/02/1995	Failed	52	-
S63	19830779	Official Result	08/29/1989	08/29/1989	Passed	74	-

CE Regulatory Element Status

Current CE Status NOCESTATUS

CE Base Date

CE Appointments

<<No CE Appointments found for this Individual.>>

Current CE

<<No Current CE found for this Individual.>>

Next CE

<<No Next CE found for this Individual.>>

CE Directed Sequence History

<<No CE Directed Sequence History found for this Individual.>>

Inactive CE History Dates

<<No Inactive CE History Dates found for this Individual.>>

Previous CE Requirement Status

<<No Previous CE Requirement Status found for this Individual.>>

Filing History

Filing Date	Form Type	Filing type	Source
09/11/2012	U6	CRD Individual	SEC
11/17/2011	U6	CRD Individual	FINRA
09/10/2001	U6	CRD Individual	FINRA
09/07/2001	U6	CRD Individual	FINRA
12/18/2000	U6	CRD Individual	FINRA

Administrative Information

Filing History

Filing Date	Form Type	Filing type	Source
12/18/2000	U6	CRD Individual	FINRA
10/31/2000	U6	CRD Individual	FINRA
01/05/2000	U6	CRD Individual	FINRA
12/23/1999	U6	CRD Individual	FINRA
07/07/1999	U6	Conversion	FINRA
07/07/1999	U5	Conversion	PACIFIC CORTEZ SECURITIES INCORPORATED (24341)
07/07/1999	U5	Conversion	HORNBLOWER & WEEKS, INC. (4683)
07/06/1999	U4	Conversion	
07/05/1999	U5	Conversion	HORNBLOWER & WEEKS, INC. (4683)
07/05/1999	U4	Conversion	HORNBLOWER & WEEKS, INC. (4683)
07/05/1999	U5	Conversion	ROYAL PALM INVESTMENTS, LTD. (28761)
07/05/1999	U4	Conversion	ROYAL PALM INVESTMENTS, LTD. (28761)
07/05/1999	U5	Conversion	TAYLOR STUART FINANCIAL, INC. (39025)
07/05/1999	U4	Conversion	TAYLOR STUART FINANCIAL, INC. (39025)
07/05/1999	U5	Conversion	EURO-ATLANTIC SECURITIES INC. (21367)
07/05/1999	U4	Conversion	EURO-ATLANTIC SECURITIES INC. (21367)
07/05/1999	U5	Conversion	WORLDCO, L.L.C. (24673)
07/05/1999	U4	Conversion	WORLDCO, L.L.C. (24673)
07/05/1999	U5	Conversion	PACIFIC CORTEZ SECURITIES INCORPORATED (24341)
07/05/1999	U4	Conversion	PACIFIC CORTEZ SECURITIES INCORPORATED (24341)
07/05/1999	U5	Conversion	WELLS FARGO ADVISORS FINANCIAL NETWORK, LLC (11025)
07/05/1999	U4	Conversion	WELLS FARGO ADVISORS FINANCIAL NETWORK, LLC (11025)
07/05/1999	U5	Conversion	INVESTORS ASSOCIATES, INC. (958)
07/05/1999	U4	Conversion	INVESTORS ASSOCIATES, INC. (958)
07/05/1999	U5	Conversion	LCP CAPITAL CORP. (14469)
07/05/1999	U4	Conversion	LCP CAPITAL CORP. (14469)
07/05/1999	U5	Conversion	DUKE & CO., INC. (8035)
07/05/1999	U4	Conversion	DUKE & CO., INC. (8035)
07/05/1999	U4	Conversion	DUKE & CO., INC. (8035)
07/05/1999	U5	Conversion	GKN SECURITIES CORP. (19415)
07/05/1999	U4	Conversion	GKN SECURITIES CORP. (19415)
07/05/1999	U5	Conversion	GRUNTAL & CO., L.L.C. (372)
07/05/1999	U4	Conversion	GRUNTAL & CO., L.L.C. (372)
07/05/1999	U5	Conversion	PRUDENTIAL EQUITY GROUP, LLC (7471)
07/05/1999	U4	Conversion	PRUDENTIAL EQUITY GROUP, LLC (7471)
07/05/1999	U5	Conversion	LEHMAN BROTHERS INC. (7506)
07/05/1999	U4	Conversion	LEHMAN BROTHERS INC. (7506)
07/05/1999	U4	Conversion	LEHMAN BROTHERS INC. (7506)

Individual 1974666 - HAMBURGER, BRETT HOWARD

Filing History

Filing Date	Form Type	Filing type	Source
07/05/1999	U5	Conversion	VANDERBILT SECURITIES, INC. (14280)
07/05/1999	U4	Conversion	VANDERBILT SECURITIES, INC. (14280)
07/05/1999	U5	Conversion	J. T. MORAN & CO., INC. (15655)
07/05/1999	U4	Conversion	J. T. MORAN & CO., INC. (15655)

Individual 1974666 - HAMBURGER, BRETT HOWARD

Reportable Events

Number of Reportable Events

Bankruptcy	0
Bond	0
Civil Judicial	1
Criminal	5
Customer Complaint	5
Internal Review	1
Investigation	0
Judgement/Lien	0
Regulatory Action	1
Termination	1

Occurrence#	88998	**Disclosure Type**	Criminal
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	63455	**Form (Form Version)**	U4 (08/1999)
Filing Date	07/06/1999		
Source	UNKNOWN ORGANIZATION		
Disclosure Questions Answered			

Criminal DRP **DRP Version** 10/2005

1. Organization:	
2. Charges brought in:	NASSA COUNTY COURT 22402/93
3. Event disclosure detail:	
A. Date first charged/Explanation:	10/11/1993
B. Event disclosure detail:	POSSESSION OF A CONTROLLED SUBSTANCE IN THE 5TH. RESISTING ARREST CLASS A MISDEMEANOR
C. Involve a felony:	Yes
D. Current status:	Final
E. Event status date/Explanation:	09/20/1994
4. Disposition disclosure detail:	1) FELONY. CHARGE DISMISSED. 2) RESISTING ARREST MISDEMEANOR PENDING. 3) POSSESSION OF A CONTROLLED SUBSTANCE IN THE 7TH PENDING
5. Comment:	I WAS ARRESTED FOR POSSESSION OF A CONTROLLED SUBSTANCE IN THE 5TH DEGREE & RESISTING ARREST. THE FELONY CHARGE OF POSSESSION OF A CONTROLLED SUBSTANCE IN THE 5TH DEGREE WAS DISMISSED AND I WAS CHARGED WITH POSSESSION OF

Individual **1974666 - HAMBURGER, BRETT HOWARD**

Reportable Events

Criminal DRP **DRP Version** 10/2005

A
CONTROLLED SUBSTANCE IN THE 7TH DEGREE (A MISDEMEANOR).

Occurrence#	192150	**Disclosure Type**	Customer Complaint
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	63455	**Form (Form Version)**	U4 (08/1999)
Filing Date	07/06/1999		
Source	UNKNOWN ORGANIZATION		
Disclosure Questions Answered			

Customer Complaint DRP **DRP Version** 10/2005

1. Customer name(s):	LAWRENCE GROUP
2. Customer(s) state of residence:	
Other state(s) of residence/Detail:	
3. Employing firm:	EURO-ATLANTIC SECURITIES INC.
4. Allegation(s):	FAILURE TO DELIVER SECURITIES BY FIRM ON DVP A/C.
5. Principal product type:	
Other product types:	
6. Alleged compensatory damages:	$51,915.00
7. Date complaint received/Explanation:	
8. Currently pending:	No
9. Status:	Arbitration/Reparation
10. Status date/Explanation:	06/16/1997
11. Settlement amount:	
12. Individual contribution amount:	
13. Arbitration/Reparation claim filed with, Docket/Case#:	National Assoc. of Securities Dealers; 96-05304
14. Date notice served/ Explanation:	12/03/1996
15. Arbitration/Reparation pending:	No
16. Disposition:	Award to Customer
17. Disposition date/Explanation:	06/16/1997
18. Compensation amount:	$5,000.00
19. Individual contribution amount:	$1,333.00

Reportable Events

Customer Complaint DRP **DRP Version** 10/2005

20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment: Not Provided
SETTLED BY ARBITRATORS FOR 5,000 TO BE PAID BY EURO-ATLANTIC $1,333. JOE BLUMENTHAL $1,333. BRETT HAMBURGER
$1,333.

Filing ID 164271 **Form (Form Version)** U6 (08/1999)
Filing Date 07/07/1999
Source UNKNOWN
Disclosure Questions Answered

SRO Arbitration/Reparation DRP **DRP Version** 10/2005

1. Case name: LAWRENCE GROUP PARTNERS, L.P. VS. EURO-ATLANTIC SECURITIES, INC., BRETT HAMBURGER AND JOSEPH BLUMENTHAL
2. Arbitration/Reparation filed with: UNKNOWN
3. Date case initiated: 12/03/1996
4. Case number: 96-05304
5. Employing firm: EURO-ATLANTIC SECURITIES INC.
6. Allegation(s): UNAUTHORIZED TRADES; FAILURE TO EXECUTE
7. Principal product type:
   Other product types:
8. Alleged compensatory damages: $51,915.00
9. Currently pending resolution: No
   Resolution: Other
   Date resolved: 06/16/1997
10. Disposition details: AWARD AGAINST PARTY
***HAMBURGER IS JOINTLY AND SEVERALLY LIABLE FOR $5,000.00 IN ACTUAL DAMAGES** *

Occurrence# 231611 **Disclosure Type** Customer Complaint

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Reportable Events

FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	63455	**Form (Form Version)**	U4 (08/1999)
Filing Date	07/06/1999		
Source	UNKNOWN ORGANIZATION		

Disclosure Questions Answered

Customer Complaint DRP **DRP Version** 10/2005

1. Customer name(s): JONATHAN FREDMAN
2. Customer(s) state of residence:
   Other state(s) of residence/Detail:
3. Employing firm:
4. Allegation(s): UNAUTHORIZED TRADING-$11,000.
5. Principal product type:
   Other product types:
6. Alleged compensatory damages: $11,000.00
7. Date complaint received/Explanation:
8. Currently pending: No
9. Status: Arbitration/Reparation
10. Status date/Explanation:
11. Settlement amount:
12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#: 96-002644
14. Date notice served/ Explanation: 11/25/1996
15. Arbitration/Reparation pending: Yes
16. Disposition:
17. Disposition date/Explanation:
18. Compensation amount:
19. Individual contribution amount:
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:

Reportable Events

Customer Complaint DRP **DRP Version** 10/2005

24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment: N/A
THE UNAUTHORIZED TRADES IN MR. FRIEDMAN'S ACCOUNT WERE DONE BY JOSEPH BLUMENTHAL IN CONJUNCTION WITH DAVID
MELLILO (PRESIDENT OF EURO-ATLANTIC).

Occurrence#	239137	**Disclosure Type**	Criminal
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	63455	**Form (Form Version)**	U4 (08/1999)
Filing Date	07/06/1999		
Source	UNKNOWN ORGANIZATION		
Disclosure Questions Answered			

Criminal DRP **DRP Version** 10/2005

1. Organization:
2. Charges brought in: Not Provided
96022228TC10A
3. Event disclosure detail:
   - A. Date first charged/Explanation: 09/20/1996
   - B. Event disclosure detail: DRIVING W/A SUSPENDED LICENSE.
   - C. Involve a felony:
   - D. Current status: Final
   - E. Event status date/Explanation: 10/01/1997
4. Disposition disclosure detail: ADJUDICATION WITHHELD. FINE $140.00
5. Comment: Not Provided

Occurrence#	239141	**Disclosure Type**	Criminal
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	63455	**Form (Form Version)**	U4 (08/1999)

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Reportable Events

Filing Date 07/06/1999
Source UNKNOWN ORGANIZATION
Disclosure Questions Answered

Criminal DRP **DRP Version** 10/2005

1. Organization:
2. Charges brought in: ALAEHUA CONTY CT.
Not Provided
3. Event disclosure detail:
   - A. Date first charged/Explanation: 01/15/1991
   - B. Event disclosure detail: BAD CHECKS
   - C. Involve a felony:
   - D. Current status: Final
   - E. Event status date/Explanation: 03/01/1991
4. Disposition disclosure detail: MADE RESTITUTION AND DID COMMUNITY SERVICE.
5. Comment: I WROTE BAD CHECKS IN 1988 WHILE IN COLLEGE IN GAINSVILLE FL. IN 1991 I GOT ARRESTED FOR 15 CHEKCS WRITTEN TO SOUTHLAND CORP. I MADE RESTITUTION ON THESE CHECKS AND SERVED
300 HRS. COMMUNITY SERVICE.

Occurrence#	239152	**Disclosure Type**	Criminal
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID 63455 **Form (Form Version)** U4 (08/1999)
Filing Date 07/06/1999
Source UNKNOWN ORGANIZATION
Disclosure Questions Answered

Criminal DRP **DRP Version** 10/2005

1. Organization:
2. Charges brought in: BROWARD COUNTY CT.
960006 3MM0A
3. Event disclosure detail:
   - A. Date first charged/Explanation: 05/07/1996
   - B. Event disclosure detail: POSSESSION OF CANIBUS.

Reportable Events

Criminal DRP **DRP Version** 10/2005

C. Involve a felony:

D. Current status: Final

E. Event status date/Explanation: 10/01/1997

4. Disposition disclosure detail: AJUDICATION WITHHELD, NO CONTEST PLEA. FINE $140.00

5. Comment: Not Provided

Occurrence#	244704	**Disclosure Type**	Customer Complaint
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	63455	**Form (Form Version)**	U4 (08/1999)
Filing Date	07/06/1999		
Source	UNKNOWN ORGANIZATION		

Disclosure Questions Answered

Customer Complaint DRP **DRP Version** 10/2005

1. Customer name(s): EARL FREEMAN
2. Customer(s) state of residence:
   Other state(s) of residence/Detail:
3. Employing firm: PACIFIC CORTEZ SECURITIES INCORPORATED
4. Allegation(s): TRADING WHILE UNREGISTERED
5. Principal product type:
   Other product types:
6. Alleged compensatory damages: $50,000.00
7. Date complaint received/Explanation:
8. Currently pending: No
9. Status: Litigation
10. Status date/Explanation:
11. Settlement amount:
12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#:
14. Date notice served/ Explanation:
15. Arbitration/Reparation pending:

Individual 1974666 - HAMBURGER, BRETT HOWARD

Reportable Events

Customer Complaint DRP **DRP Version** 10/2005

16. Disposition:	
17. Disposition date/Explanation:	
18. Compensation amount:	
19. Individual contribution amount:	
20. Court, Docket/Case#:	U.S. DISTRICT; NORTHERN DISTRICT OF IL; 97C2619
21. Date/Explanation:	04/15/1997
22. Litigation pending:	No
23. Disposition:	Settled
24. Date/Explanation:	08/01/1997
25. Compensation amount:	$50,000.00
26. Individual contribution amount:	
27. Appeal date/Explanation:	
28. Comment:	N/A SETTLED BY LA JOLLA CAPITAL WITH CLIENT.

Filing ID 132107 **Form (Form Version)** U5 (08/1999)
Filing Date 07/07/1999
Source 24341 - PACIFIC CORTEZ SECURITIES INCORPORATED
Disclosure Questions Answered

Customer Complaint DRP **DRP Version** 10/2005

1. Customer name(s):	***13B(1)(a)(iii) WAS ANSWERED ON THE DRP***EARL L FREEMAN, CUSTOMER
2. Customer(s) state of residence:	
Other state(s) of residence/Detail:	
3. Employing firm:	PACIFIC CORTEZ SECURITIES INCORPORATED
4. Allegation(s):	FRAUD FOR $50,000
5. Principal product type:	
Other product types:	
6. Alleged compensatory damages:	$50,000.00
7. Date complaint received/Explanation:	
8. Currently pending:	No
9. Status:	Litigation
10. Status date/Explanation:	

Individual **1974666 - HAMBURGER, BRETT HOWARD**

Reportable Events

Customer Complaint DRP **DRP Version** 10/2005

11. Settlement amount:
12. Individual contribution amount:
13. Arbitration/Reparation claim filed with, Docket/Case#:
14. Date notice served/ Explanation:
15. Arbitration/Reparation pending:
16. Disposition:
17. Disposition date/Explanation:
18. Compensation amount:
19. Individual contribution amount:

20. Court, Docket/Case#:	U.S. DISTRICT; NORTHERN DISTRICT OF IL; 97C2619
21. Date/Explanation:	04/15/1997
22. Litigation pending:	No
23. Disposition:	Settled
24. Date/Explanation:	08/01/1997
25. Compensation amount:	$50,000.00
26. Individual contribution amount:	
27. Appeal date/Explanation:	
28. Comment:	PAYMENT OF $50,000 TO FREEMAN HAMBURGER WAS NOT REGISTERED AS A BROKER IN ILLINOIS. HE REPRESENTED TO CLAIMANT, FREEMAN, THAT HE WAS A DIFFERENT PERSON, MARK GOLDEN.

Occurrence#	244707	**Disclosure Type**	Customer Complaint
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	63455	**Form (Form Version)**	U4 (08/1999)
Filing Date	07/06/1999		
Source	UNKNOWN ORGANIZATION		

Disclosure Questions Answered

Customer Complaint DRP **DRP Version** 10/2005

1. Customer name(s):	EARL FREEMAN
2. Customer(s) state of residence:	
Other state(s) of residence/Detail:	

Individual 1974666 - HAMBURGER, BRETT HOWARD

Reportable Events

Customer Complaint DRP **DRP Version** 10/2005

3. Employing firm:	
4. Allegation(s):	UNAUTHORIZED TRADES DONE BY ME
5. Principal product type:	
Other product types:	
6. Alleged compensatory damages:	
7. Date complaint received/Explanation:	
8. Currently pending:	No
9. Status:	Litigation
10. Status date/Explanation:	
11. Settlement amount:	
12. Individual contribution amount:	
13. Arbitration/Reparation claim filed with, Docket/Case#:	
14. Date notice served/ Explanation:	
15. Arbitration/Reparation pending:	
16. Disposition:	
17. Disposition date/Explanation:	
18. Compensation amount:	
19. Individual contribution amount:	
20. Court, Docket/Case#:	97C3061
21. Date/Explanation:	04/25/1996
22. Litigation pending:	Yes
23. Disposition:	
24. Date/Explanation:	
25. Compensation amount:	
26. Individual contribution amount:	
27. Appeal date/Explanation:	
28. Comment:	Not Provided UNAUTHORIZED TRADES WERE DONE BY DAVID MELIL AND JOSEPH BLUMETHAL. I HAVE SIDED WITH THE CLIENT IN THIS MATTER AND HAVE GIVEN SWORN AFFADAVITS TO THESE REMARKS.

Occurrence#	266167	**Disclosure Type**	Internal Review
FINRA Public Disclosable	No	**Reportable**	Yes

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Reportable Events

Material Difference in Disclosure No

Filing ID 132106 **Form (Form Version)** U5 (08/1999)
Filing Date 07/07/1999
Source 4683 - HORNBLOWER & WEEKS, INC.
Disclosure Questions Answered

Internal Review DRP **DRP Version** 10/2005

Part I

1. Notice received from: HORNBLOWER & WEEKS INC
2. Date initiated/Explanation:
3. Details: INTERNAL REVIEW
N/A
UNAUTHORIZED TRADING IN HIS OWN PERSONAL
ACCOUNT WHILE STILL UNDER SRR REVIEW, CREATING AN
UNSECURED
DEBIT OF $8986.84 PLUS INTEREST.
PENDING
Not Provided
4. Date concluded/ Explanation:

Part II

Summary:

Occurrence# 268294 **Disclosure Type** Termination
FINRA Public Disclosable Yes **Reportable** Yes
Material Difference in Disclosure No

Filing ID 63455 **Form (Form Version)** U4 (08/1999)
Filing Date 07/06/1999
Source UNKNOWN ORGANIZATION
Disclosure Questions Answered

Termination DRP **DRP Version** 10/2005

1. Firm name: LEHMAN BROTHERS INC.
2. Termination type: Permitted to Resign
3. Date filed/Explanation: 11/02/1990
4. Allegation(s): N/A
USING ANOTHER BROKER AS A REFERENCE, WHICH I
WAS NOT AUTHORIZED TO DO.
5. Principal product type:
   Other product type:
6. Comment: TERMINATION

Individual 1974666 - HAMBURGER, BRETT HOWARD

Reportable Events

Termination DRP **DRP Version** 10/2005

I AM ANSWERING NO TO QUESTION 22N(1). I DID NOT
VIOLATE INVESTMENT. RELATED STATUSES, REGULATIONS RULES OR
INDUSTRY STANDARDS OF CONDUCT. THIS IS CONFIRMED IN A U5
FORM
FILED BY SLH ON 2/15/91. QUESTION #15 PERTAINS TO THIS MATTER.

Occurrence#	278464	**Disclosure Type**	Customer Complaint
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	132107	**Form (Form Version)**	U5 (08/1999)
Filing Date	07/07/1999		
Source	24341 - PACIFIC CORTEZ SECURITIES INCORPORATED		

Disclosure Questions Answered

Customer Complaint DRP **DRP Version** 10/2005

1. Customer name(s):	LA JOLLA CAPITAL CORPORATION
2. Customer(s) state of residence:	
Other state(s) of residence/Detail:	
3. Employing firm:	
4. Allegation(s):	MISREPRESENTATIONS TO A CLIENT IN ILLINOIS WHICH COST THE FIRM IN EXCESS OF $50,000 DAMAGES.
5. Principal product type:	
Other product types:	
6. Alleged compensatory damages:	
7. Date complaint received/Explanation:	
8. Currently pending:	No
9. Status:	Arbitration/Reparation
10. Status date/Explanation:	
11. Settlement amount:	
12. Individual contribution amount:	
13. Arbitration/Reparation claim filed with, Docket/Case#:	National Assoc. of Securities Dealers; 97-05286
14. Date notice served/ Explanation:	11/12/1997
15. Arbitration/Reparation pending:	Yes
16. Disposition:	
17. Disposition date/Explanation:	

Reportable Events

Customer Complaint DRP **DRP Version** 10/2005

18. Compensation amount:
19. Individual contribution amount:
20. Court, Docket/Case#:
21. Date/Explanation:
22. Litigation pending:
23. Disposition:
24. Date/Explanation:
25. Compensation amount:
26. Individual contribution amount:
27. Appeal date/Explanation:
28. Comment: WAITING A HEARING
HAMBURGER USED THE NAME OF BROKER MARK GOLDEN WHILE TRANSACTING BUSINESS IN ILLINOIS BECAUSE HAMBURGER WA
SNOT REGISTERED IN ILLINOIS TO DO BUSINESS.

Occurrence#	679970	**Disclosure Type**	Regulatory Action
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	7391204	**Form (Form Version)**	U6 (08/1999)
Filing Date	12/18/2000		
Source	FINRA		
Disclosure Questions Answered			

Regulatory Action DRP **DRP Version** 10/2005

1. Regulatory action initiated by: NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
2. Principal sanction:
   Other sanction(s):
3. Date Initiated/Explanation: 12/08/1999
4. Docket/Case#: C10990210
5. Employing firm:
6. Principal product type: Other
   Other product type(s):
7. Allegation(s): 12/23/99GS: NASD RULES 1031,2110 - RESPONDENT HAMBURGER EXCUTED UNAUTHORIZED TRANSACTIONS IN A PUBLIC CUSTOMER'S ACCOUNT; ACTED AS A REGISTERED REPRESENTATIVE WHILE UNREGISTERED, USED A NAME OTHER THAN HIS OWN WHEN SOLICITING THE CUSTOMER TO PURCHASE

Regulatory Action DRP **DRP Version** 10/2005

AND/OR SELL SECURITIES; SOLICITED THE PURCHASE AND SALE OF SECURITIES FROM A PUBLIC CUSTOMER WHO RESIDED IN THE STATE OF ILLINOIS WHILE NOT REGISTERED IN THE STATE OF ILLINOIS; AND, FAILED TO RESPOND TO NASD REQUESTS TO APPEAR FOR AN ON-THE-RECORD INTERVIEW MADE PURSUANT TO NASD RULE 8210.

8. Current status: Final
9. Appealed to:
10. Resolution: Decision
11. Final order:
12. Resolution date/Explanation: 11/24/2000
13. A. Resolution detail: Bar Sanction
    B. Other sanction(s) ordered:
    C. Sanction detail: 10-31-00, DEFAULT DECISION RENDERED OCTOBER 27, 2000 WHEREIN RESPONDENT IS BARRED FROM ASSOCIATION WITH ANY NASD MEMBER IN ANY CAPACITY. IF NO FURTHER ACTION, DECISION WILL BE FINAL NOVEMBER 24, 2000.12-18-00, NOVEMBER 24, 2000 - DECISION IS FINAL.
14. Comment:

Occurrence#	1029831	**Disclosure Type**	Criminal
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	31381202	**Form (Form Version)**	U6 (05/2009)
Filing Date	11/17/2011		
Source	FINRA		
Disclosure Questions Answered			

Criminal DRP **DRP Version** 05/2009

1. Organization:
   A. Organization name:
   B. Investment-related business:
   C. Position:
2. Formal action was brought in: Federal Court
   A. Name of court: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK
   B. Location of court: BROOKLYN, NEW YORK
   C. Docket/Case#: 01CR917

Individual 1974666 - HAMBURGER, BRETT HOWARD

Reportable Events

Criminal DRP **DRP Version** 05/2009

3. Event status:

A. Current status: Final

B. Event status date/Explanation: 03/13/2003

4. Event and disposition disclosure detail:

A. Date first charged/Explanation: 08/15/2001

B. Event and disposition detail:

Formal charge description:	CONSPIRACY TO DEFRAUD THE UNITED STATES - SECURITIES FRAUD - IN VIOLATION OF 18 U.S.C. §§ 371 AND 3551 ET SEQ
No. of Counts:	1
Felony or misdemeanor:	Felony
Plea for each charge:	GUILTY
Disposition of charge:	Pled guilty
Explanation:	COUNT ONE OF THE SECOND SUPERSEDING INDICTMENT
Date of amended charge:	
Amended charge:	
No. of Counts:	
Amended felony or misdemeanor:	
Pleas for amended charge:	
Disposition of amended charge:	
Explanation:	

C. Date of disposition/Explanation: 03/13/2003

D. Sentence/Penalty details: ON MARCH 13, 2003, THE HONORABLE JUDGE FOR THE U.S. DISTRICT COURT ENTERED A JUDGMENT AGAINST HAMBURGER, SENTENCING HIM TO FIVE YEARS PROBATION, TO SERVE TEN MONTHS HOME DETENTION, AND ORDERING HIM TO PAY $290,000 IN RESTITUTION. ALL REMAINING COUNTS WERE DISMISSED.

5. Comment:

Occurrence#	1626164	**Disclosure Type**	Civil Judicial Action
FINRA Public Disclosable	Yes	**Reportable**	Yes
Material Difference in Disclosure	No		

Filing ID	33131417	**Form (Form Version)**	U6 (05/2009)
Filing Date	09/11/2012		
Source	United States Securities and Exchange Commission		

Disclosure Questions Answered

Civil Judicial DRP **DRP Version** 05/2009

Individual 1974666 - HAMBURGER, BRETT HOWARD

Reportable Events

Civil Judicial DRP **DRP Version** 05/2009

1 A. Court action initiated by:	Securities and Exchange Commission
B. Name of party initiating the proceeding:	UNITED STATES SECURITIES AND EXCHANGE COMMISSION
2. Relief sought:	Civil and Administrative Penalty(ies)/Fine(s) Disgorgement Injunction Monetary Penalty other than Fines
3. Court action:	
A. Filing date/Explanation:	09/10/2012
B. Date notice/process was served/Explanation:	
4. Product type(s):	Other: UNREGISTERED SECURITIES
5. Formal action brought in:	Federal Court
A. Name of court:	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
B. Location of court:	BOSTON, MA
C. Docket/Case#:	1:12-CV-11669
6. Employing firm:	JCBH CONSULTING, LLC, A/K/A JCB CONSULTING AND JBC CONSULTING
7. Allegation(s):	SEC LITIGATION RELEASE 22478, SEPTEMBER 10, 2012: ON SEPTEMBER 10, 2012, THE SECURITIES AND EXCHANGE COMMISSION FILED AN ENFORCEMENT ACTION IN FEDERAL COURT IN BOSTON CHARGING A MASSACHUSETTS-BASED CORPORATION AND OTHERS FOR THEIR ROLES IN A FRAUDULENT OFFERING OF UNREGISTERED CORPORATION SECURITIES. THE DEFENDANTS ARE CHARGED WITH DEFRAUDING INVESTORS THROUGH VARIOUS MISREPRESENTATIONS AND SCHEMES WHILE RAISING AT LEAST $26 MILLION IN INVESTOR FUNDS. IN ADDITION TO THE CORPORATION, THE COMMISSION'S COMPLAINT CHARGES, AMONG OTHER DEFENDANTS, BRETT HAMBURGER OF DELRAY BEACH, FLORIDA, A CONSULTANT TO THE CORPORATION WHO RAISED INVESTOR FUNDS FOR THE COMPANY. THE COMMISSION ALSO NAMED ANOTHER COMPANY, AN ENTITY CONTROLLED BY ONE OF THE DEFENDANTS, AS A RELIEF DEFENDANT BASED ON ITS RECEIPT OF INVESTOR FUNDS. ACCORDING TO THE COMMISSION'S COMPLAINT, FILED IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, THE CORPORATION, WHICH PURPORTS TO DEVELOP, MANUFACTURE AND SELL A MACHINE FOR COMBATING THE USE OF DANGEROUS BIOLOGICAL AGENTS THROUGH THE MAILS, AND ITS PRINCIPALS BEGAN ENGAGING IN UNREGISTERED OFFERS AND SALES OF SECURITIES TO INVESTORS IN THE UNITED STATES BY AT LEAST 2004 AND, AFTER ATTRACTING THE ATTENTION OF VARIOUS DOMESTIC STATE REGULATORS IN 2008, BEGAN UTILIZING "BOILER ROOM" FIRMS

TO ASSIST IN SELLING SHARES OF CORPORATION SECURITIES TO OVERSEAS INVESTORS PRIMARILY IN THE UNITED KINGDOM.

THE COMMISSION'S COMPLAINT ALLEGES THAT, WHILE MAKING UNREGISTERED OFFERS AND SALES OF SECURITIES TO US INVESTORS FROM AT LEAST 2004 THROUGH AUGUST 2008, DEFENDANTS MADE FALSE CLAIMS TO INVESTORS THAT THE CORPORATION WAS NOT PAYING FINANCIAL COMPENSATION TO ITS EMPLOYEES AND OFFICERS. THE COMPLAINT FURTHER ALLEGES THAT THESE INDIVIDUALS GAVE POTENTIAL INVESTORS THE FALSE IMPRESSION THAT THE CORPORATION PRESERVED ITS CASH ASSETS BY HAVING EMPLOYEES WHO WORKED FOR NO, OR VERY LITTLE, PAY, SUGGESTING THAT THESE EMPLOYEES WERE WORKING SOLELY OR PRIMARILY FOR "SWEAT EQUITY" SHARES, WHICH MIGHT LATER BECOME VALUABLE WHEN THE COMPANY BECAME PROFITABLE OR UNDERWENT AN INITIAL PUBLIC OFFERING OF STOCK. IN FACT, THE CORPORATION'S LARGEST EXPENSE DURING THOSE YEARS WAS THE MONEY IT PAID TO DEFENDANTS AND OTHER EMPLOYEES FROM FUNDS RAISED FROM INVESTORS; IN 2004 ALONE, THE CORPORATION PAID APPROXIMATELY $1 MILLION IN COMPENSATION TO ITS OFFICERS AND EMPLOYEES.

THE COMMISSION'S COMPLAINT FURTHER ALLEGES THAT, AS THE CORPORATION BEGAN RAISING MONEY OVERSEAS IN AUGUST 2008, THE DEFENDANTS TRANSFORMED THE COMPANY INTO A DECEPTIVE AND FRAUDULENT DEVICE DESIGNED TO ENRICH ITS PRINCIPALS WHILE ALSO PAYING AS MUCH AS 75% OF INVESTOR PROCEEDS AS COMMISSIONS TO ITS OVERSEAS BOILER ROOM FUNDRAISERS. FROM AUGUST 2008 THROUGH APPROXIMATELY JULY 2010, THE CORPORATION'S MOST SUBSTANTIAL SOURCE OF CASH GENERATION AND MOST SIGNIFICANT EXPENSE WAS NOT MANUFACTURING AND SELLING MACHINES, BUT INSTEAD WAS ITS SECURITIES PROMOTION AND SALES ACTIVITIES. THE CORPORATION AND ITS REPRESENTATIVES DID NOT TELL INVESTORS THAT 75% OF FUNDS RECEIVED FROM THEM WOULD BE GOING STRAIGHT TO BOILER ROOM OPERATORS.

THE COMMISSION ALLEGES THAT ALL DEFENDANTS VIOLATED SECTION 17(A) OF THE SECURITIES ACT OF 1933 ("SECURITIES ACT") AND SECTION 10(B) OF THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT") AND RULE 10B-5 THEREUNDER; THAT THE CORPORATION, AND OTHER DEFENDANTS, VIOLATED SECTIONS 5(A) AND 5(C) OF THE SECURITIES ACT; AND THAT HAMBURGER, AND OTHER DEFENDANTS, VIOLATED SECTION 15(A)(1) OF THE EXCHANGE ACT. (CONTINUED IN COMMENT)

8. Current status: Pending

9. Limitations or restrictions while pending: N/A

10. If on appeal:

Individual 1974666 - HAMBURGER, BRETT HOWARD

Reportable Events

Civil Judicial DRP **DRP Version** 05/2009

A. Action appealed to:

B. Court location:

C. Docket/Case#:

D. Date appeal filed/Explanation:

E. Appeal details:

F. Limitations or restrictions while on appeal:

11. Resolution detail:

A. Resolution:

B. Resolution date/Explanation:

12. Sanction detail:

A. Sanction detail:

B. Other sanctions:

C. Enjoined:

D. Monetary Sanction:

13. Comment: (CONTINUED FROM #7) THE SEC SEEKS IN ITS ACTION PERMANENT INJUNCTIONS, DISGORGEMENT PLUS PREJUDGMENT INTEREST, AND CIVIL PENALTIES.

Regulator Archive and Z Records

<<No Regulator Archive and Z Records found for this Individual.>>