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

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



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

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July 20, 2012

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

## PRELIMINARY STATEMENT

As the extensive trial record demonstrates, Respondents Ronald Bloomfield and John Martin received substantial profits from trading in seven accounts maintained by customers with risk profiles and regulatory histories that they were intimately familiar with. As Bloomfield and Martin knew, these customers were promoters of the stocks they were selling; operated multiple accounts under different names; maintained offshore headquarters and wired millions of dollars to a known tax haven. Throughout their career in the shadowy world of penny stocks, which spanned most of the last decade, Bloomfield and Martin had customer accounts that engaged in similar activities that were shut down by their firms. Div. FOF[1] ¶¶ 4, 5, 12, 13, 23; Div. Ex. 405; Div. Ex. 408; Tr. 1676, 1723, 1726-1732, 1733-1736. While at Leeb Brokerage Services, Inc. ("Leeb"), however, Bloomfield and Martin were able to keep their penny stock accounts running profitably for more than two years. Div. FOF ¶ 9.

Bloomfield and Martin were aware of their reporting obligations and of the activity in the accounts. *E.g.*, Tr. at 1347-48 (Bloomfield's testimony that "I think any firm, if they believe there's suspicious activity, have to file a Suspicious Activity Report"). Turning a blind eye to their reporting requirements allowed the trading in these accounts to continue unchecked and unquestioned at least from October 2005 until the firm closed its doors in June 2007. Fulfilling the reporting requirements would have risked the profitable relationships they had established with their customers and the substantial commissions they received. The $1.2 million that the

[1] "Div. FOF" refers to the Division of Enforcement's Proposed Findings of Fact and Conclusions of Law dated November 1, 2010. "Tr." refers to the transcript of the administrative hearing in this matter on September 13, 14, 15, 16, 20 and 21, 2010. "ID" refers to the Corrected Initial Decision dated April 26, 2011.

law judge ordered be disgorged represent ill-gotten gains and were earned during the time Respondents were blatantly aiding and abetting Leeb's violations of its reporting obligation. The law judge properly ordered disgorgement of these profits, and narrowly tailored the remedy to the accounts with the most egregious activity.

As the law judge found, the record in this case reveals "the seamiest, corrupt side of the securities industry, where greed and profit were the driving force." ID at 28. As gatekeepers, Bloomfield and Martin had a duty to cause Leeb to report and respond to suspicious activity. They completely failed to fulfill this duty in order to keep their profits flowing. The seven accounts at issue did not function like typical brokerage accounts, but rather like vessels through which billions of shares of low-priced, unregistered shares were transferred in order to make a quick profit for promoters, insiders, and their brokers.

The alternative measure of disgorgement offered by Bloomfield and Martin is limited to the commissions earned from their Section 5 violations. This is a small subset on the profits received from the seven accounts and would allow these Respondents to retain more than $1.2 million in ill-gotten commissions. This measure of disgorgement would enrich these wrongdoers by allowing them to retain their ill-gotten gains connected to the Section 17(a)/Rule 17a-8 violations, defeat the deterrent effect of disgorgement, and undermine the purpose of Section 17(a)/Rule 17a-8.

**RESPONSES TO THE SIX QUESTIONS IN**
**THE *ORDER DIRECTING ADDITIONAL BRIEFING***

**Question No. 1**

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

**Response to Question No. 1**

No. Although the OIP identified specific securities that related to the Section 5 violations, these securities were examples and were not intended to represent an exclusive list of securities that were sold in violation of Section 5. Attestations from the Commission's Records Officer were admitted into evidence at trial relating to nine issuers of securities traded by the customers of Bloomfield and Martin. Div. Exs. 312-321. The OIP, however, does not state that these were the only nine unregistered offerings. Indeed, no clear evidence was admitted demonstrating that any offering was registered with the Commission or covered by an exemption. ID at 29; Div. Exs. 312-321. As the Court found, "Bloomfield could not recall ***any*** security in a customer account that was covered by a registration statement." ID at 7 (emphasis added).

**Question No. 2**

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

**Response to Question No. 2**

With respect to just the securities for which detailed Section 5 evidence was introduced at trial, the Division's calculation of commissions is slightly different from Bloomfield and Martin's. As explained below, the Division calculates that gross commissions are $133,351; Martin's profits are $82,678 and Bloomfield's profits are $23,336. The primary difference between the parties' calculations is that Bloomfield and Martin have ignored a 12.5% share of commissions that Bloomfield received from Martin.

The Commission's *Order Directing Additional Briefing* notes that Bloomfield and Martin submitted an exhibit (Bloomfield Exhibit 1) showing gross commissions of $150,117, and that they testified that their share of those commissions was 55% for Martin and 5% for Bloomfield. That testimony suggests that the two of them combined received only 60% of Leeb's gross commissions. That, however, is incorrect.

Division Exhibit 348, a letter and supporting documentation submitted to Staff by Bloomfield and Martin's prior counsel, and trial testimony from a Staff examiner who analyzed the commission payments, demonstrate the actual breakdown of commissions. As an initial matter, Martin was entitled to 85% of Leeb's gross commissions, less expenses, and Bloomfield was to receive 5% of the commissions from Leeb (a 90/10 split between the OSJ and Leeb, subject to deduction of costs by Leeb). After that, however, Martin also paid Bloomfield an additional 12.5% from his own share, representing an "override" for "Santa Monica office expenses." Div. Ex. 348 at MB0001 (showing 12.5% override for "Ron"); Tr. 203:13-204:19; 215:20-217:4. Bloomfield's testimony, though vague, confirms his receipt of this additional amount from Martin. Tr. 1417:4-1418:1. Thus, the general commission breakdown was for Martin to receive an amount equal to 85% minus expenses paid to Leeb, and minus a 12.5% "override" to Bloomfield, and for Bloomfield to receive an amount equal to 5% plus the 12.5% override from Martin.

Furthermore, whereas Respondents' testimony at trial that Martin's final share (after Leeb deducted expenses and Martin paid 12.5% to Bloomfield) was approximately 55% of total gross commissions, prior counsel had represented that Martin received approximately 60% of the gross commissions. Div. Ex. 348. Based on the charts attached to counsel's letter, however, together with staff analysis, Staff determined that the percentage for the securities in question was actually 62%.

Therefore, the actual breakdown of commissions was as follows: Martin received 62% of gross; Bloomfield received 17.5% of gross; and Leeb kept 21.5% of gross (an initial 10% of gross, plus costs), rather than the 40% implied by Respondents' testimony. These percentages were the basis for the Division's own calculation of commissions (Div. 361), and Respondents did not put in any documentary evidence challenging that calculation.

Applying those percentages to the commissions shown in Bloomfield Exhibit 1, the commission totals for the Section 5 violations would be $83,135.80 for Martin and $23,467.75 for Bloomfield. We arrive at those figures by applying the percentages discussed above (62% for Martin and 17.5% for Bloomfield) to the sell side commissions of $134,090 shown in Bloomfield Ex. 1. However, as noted above, the Division's own calculation for total sell side commissions for only the specific securities presented at trial is slightly lower, $133,351, which in turn would result in figures of $82,678 and $23,336 for Martin and Bloomfield, respectively.

**Question No. 3**

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

**Response to Question No. 3**

No. The Exchange Act Section 17(a) violations by Bloomfield and Martin relate to two customers (the Useltons and Thimble) and seven accounts used by these customers rather than solely to the specific securities identified in the OIP. *See* OIP ¶¶ 12, 47, 48. Section 17(a) of the Exchange Act and Rule 17a-8 thereunder requires broker-dealers such as Leeb to file a

Suspicious Activity Report if it learns of a transaction, or pattern of transactions, involving $5,000, and it knows or suspects that the transaction:

> (1) involved funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities…;
>
> (2) is designed, whether through structuring or other means, to evade any requirements of . . . the Bank Secrecy Act . . .
>
> (3) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or
>
> (4) involved use of the broker-dealer to facilitate criminal activity.

31 C.F.R. § 1023.320.

The transactions in the Uselton and Thimble accounts fell into these categories. At trial, the evidence overwhelmingly established that Bloomfield and Martin's exhibited a continuous disregard of reporting obligations with respect to these account holders and the persistent suspicious conduct in which they engaged.

<u>The Six Uselton-Related Accounts</u>. The six Uselton Accounts by their very nature created the ongoing risk that they were involved in unlawful activity. A stock promoter, Darrel Uselton, known to be compensated for promotions by private share issuances, and known to have promised to commit his own capital for what was euphemistically called "liquidity services" provided to issuer clients who hired him, controlled a series of accounts held in a variety of corporate names, and acted in concert with a relative (Jack Uselton) and associate (Scott Sieck) who each had prior consent judgments for participation in stock frauds, while the accounts routinely deposited in penny stocks that were obtained privately and then sold to the public. Div.

FOF ¶¶ 21-34; Div. Ex. 3; Div. Ex. 64; Div. Ex. 70; Div. Ex. 99; Div. Ex. 106; Tr. 1331:9-21, 1464:2-19, 1517:17-1519:11, 1584:15-1585:4; *see also* Div. FOF 208-11.

The transactions in these accounts showed indications of unlawful activity—not just Section 5 violations, but promotion-related violations such as scalping and manipulation related to the large blocks of privately obtained penny stocks that were routinely being delivered. See Div. FOF ¶¶ 60, 69-92, 122-135, 150-155; 206-213; Div. Ex. 1 at 15-16, 19-22, 28-31, Appendix D (Report of Robert Lowry). In essence, the account profile and relationship was a recipe for unlawful conduct. The specific securities focused on at length at trial (*see* Div. FOF ¶¶ 63-155) provide ample detailed illustrations of the suspicious activity that occurred, and the broader pattern of suspicious conduct that those examples represent was also established. Div. Ex. 1; Div. FOF ¶¶ 21, 25, 27, 32, 34, 58-61, 212-213.

Shortly after Leeb stopped operations, federal and state law enforcement brought a variety of charges against the Useltons. See Div. Ex. 377 (Jack Uselton indicted for felony money laundering charges in June 2007); Div. Exs. 368, 369, 370 (Jack and Darrel Uselton charged with market manipulation by SEC).

<u>The Thimble Account</u>. Similarly to the Uselton Accounts, every aspect of the Thimble Account's profile and trading history spelled out the existence of suspicious conduct. The account was established by Michael Laidlaw, who was a principal at an unregistered Canadian entity named Corporate House that provided "tax services" to its clients. Div. FOF ¶¶ 37-38; Div. Ex. 43; Div. Ex. 83; Div. Ex. 328; Tr. 1659:9-1660:16, 1662:22-24). No Corporate House customer was disclosed as the beneficial owner of Thimble, but rather Laidlaw—who had already opened up a prior offshore corporate account listing him as the beneficial owner—claimed to be Thimble's owner. Div. Ex. 41; Div. Ex. 43; Div. Ex. 86. Communications

regarding the account were with another Corporate House official and two traders located in Central America, none of whom had been given written authority over the account. Div. Ex. 328; Div. Ex. 345; Tr. 1298:18-1299:12, 1398:3-7. Meanwhile, Thimble, which was incorporated in Nevis, routinely transferred in privately obtained stock, sold the stock to the public, and then wired the stock proceeds to a bank account in Liechtenstein, a known tax haven. Div. FOF ¶¶ 35-41; Div. Ex. 1; Div. Ex. 43; Div. Ex. 126; Div. Ex. 127; Div. Ex. 355.

The sum of all this activity resulted in this offshore-incorporated entity, with questionable beneficial ownership and control, repeatedly depositing in shares of different issuers, selling the shares to the public (at times with directions to route orders to a particular market maker, raising the possibility of an arranged buyer), and ultimately wiring $41.4 million of the stock proceeds to Liechtenstein. Div. FOF ¶¶ 35-41, 61, 93-121, 136-149; Div. Ex. 355; Tr. 1564-1565.

By deliberately keeping quiet about these transactions, Bloomfield and Martin sought to preserve their relations with their customers and ensure that the Uselton and Thimble accounts stayed open. Bloomfield and Martin consciously disregarded their obligations and had a critically essential role in the firm's violation.

**Question No. 4**

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

**Response to Question No. 4**

Division Exhibit 361 proves that Martin wrongfully obtained $964,868, and Bloomfield wrongfully obtained $272,342 in profits as a result of their repeated violations of Exchange Act Section 17(a) and Exchange Act Rule 17a-8. These commissions represent profits from transactions in the accounts for which suspicious activity should have been reported.

Bloomfield and Martin do not dispute the accuracy of the amounts in Division Exhibit 361.

**Question No. 5**

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

**Response to Question No. 5**

Bloomfield and Martin received more than $1.2 million in profits from transactions in the seven accounts, and the reporting violations allowed these accounts to remain open throughout the relevant period. From prior experience, Bloomfield and Martin knew that if they had complied with their reporting obligations then the accounts and their profits from these accounts would be in jeopardy. The trial record contains abundant evidence that demonstrating that Bloomfield and Martin knew and understood that reporting the suspicious activity in these seven accounts would cut off their commissions.

Prior to coming to Leeb, Bloomfield and Martin conducted their profitable penny stock business with the Uselton-affiliated customers at a broker-dealer named Western Securities, where Bloomfield and Martin were among the top-producers out of 250 brokers at Western. Tr. at 1735-36. And yet, after an investigation that ended only seven months after they started at Western, Western's Chief Compliance Officer told Bloomfield and Martin that the Uselton accounts had to be closed.

The Chief Compliance Office, Craig Watanabe, testified that he had "numerous conversations" with Bloomfield and Martin about their penny stock business and that they understood the reasonable inquiry requirement. Tr. at 1726. Because the Useltons transacted business not in their own names but in other names, Watanabe subjected the Uselton accounts to "heightened diligence." Tr. at 1727-28. His scrutiny revealed that Useltons accounts "were used not for a particular business purpose, but . . . for the purpose of concealing the person's identity." Tr. at 1728-29.

Watanabe's investigation of the Uselton accounts also revealed that Jack Uselton had been in the securities industry and had a disciplinary history, and Watanabe observed that the pattern of trading in the Uselton accounts "was fairly indicative of what we would see with penny stock fraud . . . . we would see deliveries of securities, securities would be sold, and then the money wired out." Tr. at 1730-31. Based on these and other issues, Watanabe developed "very serious concerns" about the Uselton accounts. Tr. at 1734-35.

Watanabe determined that "we could no longer allow this business at the firm" and told Bloomfield and Martin that the Uselton accounts must "leave the firm." Tr. at 1735. In a letter dated July 22, 2004, only seven months after becoming associated with Western, Watanabe informed Bloomfield and Martin that Western was "exercising its right to discontinue doing business with all clients who conduct penny stock business." Martin Ex. 2. Bloomfield and Martin could have discontinued their penny stock business which would have allowed them to remain at Western. Instead, they chose to leave Western and look for a new firm in order to maintain their profitable relationship with the Useltons. Tr. at 1686, 1736; Div. Exs. 2, 7.

After Western, Bloomfield and Martin took their penny stock business to Leeb, where they found a compliance environment that completely failed to fulfill its oversight functions. Leeb's clearing firm, Pershing, however, soon after Bloomfield and Martin joined Leeb, closed numerous accounts and filed reports for the same patterns of activity that caused the account closings at Western. Div. FOF ¶ 213; Div. Ex. 13, 15, 20; Tr. at 95-97, 99, 103-06. An internal Pershing memorandum summarized the accounts that Pershing had closed and reports filed, as well as the conduct of Bloomfield and Martin. Div. Ex. 42. On December 13, 2005, Pershing notified Leeb of the termination of their clearing agreement. Div. Ex. 60. And with respect to the Useltons specifically, by the Fall of 2005 they were already receiving inquiries from the NASD and the Oklahoma Department of Securities. Div. FOF ¶¶ 219-221; Div. Ex. 45; Div. Ex. 50; Div. Ex; 57. The next clearing firm, Legent, also repeatedly notified Bloomfield of problems regarding their customer that should have caused Bloomfield and Martin to fulfill their reporting requirements. Div. Exs. 97, 99-102, 105-113.

After Leeb closed in June 2007, Bloomfield and Martin took their penny stock business to National Financial, which eventually terminated the relationship because, as Martin testified at trial, National "didn't want to do the penny stock business." Div. FOF ¶ 13; Tr. at 1676.

As a result, Bloomfield and Martin were well aware of the financial risks that followed compliance and regulatory scrutiny of their customers. In the end, Bloomfield and Martin allowed their desire to protect their clients, and the commission income they generated from those clients, to trump their obligations under Rule 17a-8 to cause the firm to file SARs. Bloomfield and Martin should not be allowed to keep the fruits of their silence.

In the face of the continued activity that Bloomfield and Martin allowed to occur throughout the life of the Uselton and Thimble accounts, they never even once considered causing their firm to file a Suspicious Activity Report. Tr. at 1347-48, 1669. On the extensive record from the trial, it is plain that no series of events would have caused Bloomfield and Martin to cause their firm to file a Suspicious Activity Report. In this regard, it is notable that Darrell Uselton had been Martin's employer, was a long-term customer, and had been responsible for the referreral that led to Thimble becoming a customer of Martin and Bloomfield. Div. FOF ¶ 22; Tr. at 1456-57, 1466-67, 1539-40, 1586-88, 1658-59, 1670-73.

Bloomfield and Martin knew and understood their duty to report suspicious activity, and the commissions they stood to earn by standing silently by their clients was indeed a factor pushing them to overlook their regulatory obligations. At trial, Bloomfield candidly testified about his calculus in determining whether to maintain a client relationship:

> [Y]ou make a judgment on whether or not the amount of money that you could potentially make is worth the amount of aggravation and scrutiny you have to go under if, for some reason, you're not – the client turns out to be no good.

Tr. at 1343:8-1345:5.

The evidence shows that Bloomfield and Martin did not take any action, such as reporting to the firm that suspicious activity was occurring, that could potentially cut off their stream of commissions from these extremely profitable accounts. A broker's deliberate silence regarding a customer's wrongdoing should not enable the broker to retain any benefit from any part of the customer's business. Benefits purchased by unlawful silence should be forfeited. If the reporting obligations of Section 17(a) and Rule 17a-8 are to be meaningful, then gatekeepers such as Bloomfield and Martin who so flagrantly flout their obligations should not be allowed to keep the profits that were associated with such conduct.

Bloomfield and Martin collectively earned over $1.2 million in commissions from these accounts alone in less than two years. See Div. Ex. 361. Perhaps if these accounts were not as lucrative, Bloomfield and Martin might not have gambled that they could violate their reporting obligations with impunity.

**<u>Question No. 6</u>**

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

**<u>Response to Question No. 6</u>**

The Initial Decision ordered disgorgement of all profits from seven accounts from October 1, 2005 through June 1, 2005. As a result, Bloomfield and Martin are allowed to retain all profits from these accounts received before October 1, 2005, nearly one year of activity for the six Uselton-related accounts. Indeed, the October 1, 2005 starting point represents a conservative measure of disgorgement. By that point, Pershing had closed numerous accounts based on the transactions in those accounts (Div. Exs. 15, 42), and the risk profiles of the Uselton and Thimble accounts were known to Bloomfield and Martin. The record leaves no doubt that the commissions Bloomfield and Martin earned in the Uselton and Thimble accounts from October 2005 until Leeb shut down represent a reasonable approximation of the unjust enrichment resulting from their willful blindness and failures to cause Leeb to file Suspicious Activity Reports.

For example, with respect to the Uselton Accounts, in late September 2005 the NASD sent an enforcement-related inquiry concerning "pink sheet" stocks traded through Leeb, and in mid-October they followed that up with a request for all correspondence between Leeb and the Uselton account Warrior Capital, LLC. Div. FOF ¶¶ 219-220; Div. Ex. 45; Div. Ex. 50. Within a month, the Oklahoma Department of Securities requested information concerning the Uselton account Ibis Energy LLC and any other related accounts. Div. FOF ¶ 221; Div. Ex. 57. In the meantime, at the end of October, while their own antennae should have been suitably raised, delivery and trading began in the security Equipment and Systems Engineering, Inc.—

chronologically, the first of the detailed trading examples presented at trial. Div. FOF ¶¶ 77-78; Div. Ex. 1 at D, p.12; Div. Ex. 202; Div. Ex. 204; Tr. at 1622-26.

If there were any question concerning what activity might not have subsequently occurred had Bloomfield and Martin proactively reported on their own customer at that time, the trial record amply shows specific examples of suspicious trading throughout the next year. Div. FOF ¶¶ 82-92, 122-135, 150-155; Tr. at 1632-34. And after all of those specific events, Bloomfield received a December 7, 2006, request from the NASD for account statements for all of the Uselton accounts from April 1, 2006, through October 31, 2006. Div. Ex. 117. Still, Bloomfield and Martin took no action and instead continued to obtain commissions without causing Leeb to report any suspicious activity to the regulatory authorities.

With respect to the Thimble account, the non-stop monthly wires of stock proceeds to Liechtenstein started in October 2005. As summarized in Division Exhibit 355, the monthly amounts of proceeds wired to Liechtenstein are simply staggering—never less than $1 million a month after the very first month, and totaling more than $41 million. Accompanying that non-stop suspicious pattern of wire activity was a pattern of penny stock delivery and sale, of which the trial record contains specific detailed examples of suspicious trading ranging from February 2006 through February 2007. Div. FOF ¶¶ 93-121, 136-149. Notably, the December 7, 2006, request for information Bloomfield received from the NASD also sought all of Thimble's account statements for April through October 2006. Div. Ex. 117. Again, Bloomfield and Martin's refusal to cause Leeb to file a Suspicious Activity Report left them free to collect commissions until the day someone forced them to close the Thimble account.

The disgorgement relief ordered by the ALJ represents a reasonable approximation of Bloomfield and Martin's unjust enrichment. As the evidence shows, Bloomfield and Martin's failures were continuous throughout the period, as patently suspicious transactions engaged repeatedly in the very activity that made the accounts suspicious. Accordingly, all commissions earned during the continued period of wrongdoing should rightfully be disgorged. "Courts have held that '[i]t is proper to assume that all profits gained while [respondents] were in violation of the law constituted ill-gotten gains.'" *Matter of Riordan*, Admin. Proc. File No. 12829, 2009 SEC LEXIS 4166 at *89 (Dec. 11, 2009).

The law judge has broad equitable powers to order the disgorgement of ill-gotten gains obtained through the violation of the securities laws. *See SEC v. Fischbach Corp.,* 133 F.3d 170, 175 (2d Cir. 1997); *SEC v. First Jersey Sec., Inc.,* 101 F.3d 1450, 1474 (2d Cir. 1996). Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable. *See Hateley v. SEC,* 8 F.3d 653, 655 (9th Cir. 1993); *SEC v. Rind,* 991 F.2d 1486, 1491 (9th Cir. 1993).

"[T]he risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty." *SEC v. First City Fin. Corp.,* 890 F.2d at 1232; *see also SEC v. Sierra Brokerage Servs.,* 608 F.Supp.2d 923, 968 (S.D.Ohio 2009) (stating that "[a]ll doubts concerning the amount of disgorgement must be resolved against the violator"); *see also SEC v. Lorin,* 76 F.3d 458, 462 (2d Cir.1996).

Bloomfield's and Martin aided and abetted and caused the firm's Section 17(a) and Rule 17a-8 violations to protect the flow of commissions they received from a seven accounts that sold tens of millions of dollars of penny stocks to the public. Their silence helped them to avoid the risk that these accounts would be closed. Under the facts established in this record, Bloomfield and Martin therefore should not be allowed to retain their ill-gotten profits. *See SEC v. Sierra Brokerage*, 608 F. Supp.2d at 968 ("It is well-settled that disgorgement is an appropriate remedy for violations of the federal securities laws, including [non-scienter] reporting and disclosure obligations.").

## CONCLUSION

Based on the foregoing, as well as the Division's prior briefs on this appeal, the testimony at trial, the exhibits received into evidence, and the entire record, the disgorgement award in the Initial Decision represented a reasonable approximation of Bloomfield and Martin's ill-gotten gains and should be affirmed.

Dated: New York, New York
July 20, 2012

Respectfully submitted,

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