UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDING
File No. 3-16712

In the Matter of **Gilles T. De Charsonville,** **Respondent**	**RESPONDENT'S ANSWER**

Pursuant to Rule 220 of the SEC's Rules of Practice, Respondent Gilles T. De Charsonville, by and through his counsel Herbert Smith Freehills New York LLP, responds to the allegations of the Division of Enforcement in this matter as follows:

GENERAL RESPONSE

The imposition of further measures against Mr. De Charsonville is unnecessary and would not serve the public interest. The United States District Court of the Southern District of New York has already ordered De Charsonville to pay disgorgement in the amount of $297,174 and civil penalties in the amount of $260,000.[1] In determining the appropriate amount of civil penalties, the Court elected to impose $260,000, instead of the $2.6 million sought by the SEC, observing that

> "this is De Charsonville's first violation; even though he stumbled initially, he ended by cooperating extensively with the SEC and the Department of Justice; the fraud was limited in time; and he is already paying a significant disgorgement award. . . . The Court believes **such a penalty is sufficient to deter future such conduct and to penalize De Charsonville for his violations**, without imposing undue hardship."[2]

[1] *See* Opinion & Order, *Securities and Exchange Commission v. Michael Balboa, et al.*, Civil Action Number 11 Civ. 8731 (PAC) (S.D.N.Y. July 6, 2015), ECF No. 52 ("**Opinion & Order**"). Attached hereto as **Exhibit A** is a true and correct copy of the Opinion & Order.

[2] *Id.* at 10–11 (emphasis added).

Any further measures against De Charsonville would only serve to unbalance the Court's carefully calibrated Opinion & Order.

In particular, the imposition of an industry suspension or bar would impose significant hardship upon De Charsonville gratuitously because there is not a realistic likelihood of future violations. The factors considered in determining whether there is a likelihood of future violations include "1) the degree of scienter involved, 2) the isolated or repeated nature of the violations, 3) the defendant's recognition of the wrongful nature of her conduct, and 4) whether, because of the defendant's professional occupation future violations could be anticipated." *SEC v. 800america.com, Inc.*, No. 02 CIV 9046 HB, 2006 WL 3422670, at *11 (S.D.N.Y. Nov. 28, 2006). These factors, in the context of the specific facts and circumstances in this case, militate against the issuance of an industry suspension or bar.

A. De Charsonville did not initiate the fraud, was not the primary wrongdoer, and was for a period of time unaware of the full extent of the fraud

De Charsonville did not design or instigate the fraudulent scheme and was not the primary beneficiary of the scheme (indeed, he personally stood to receive no direct monetary gain). Furthermore, for much of the time that De Charsonville was involved in the scheme of his client, Michael Balboa ("Balboa"), De Charsonville was unaware that the marks he had provided were inflated. Instead, he was only aware that he was representing that he marked the securities when in reality he was only forwarding marks prepared by Balboa.[3] Initially, De Charsonville trusted Balboa when Balboa told him that he had quotes from two other brokers, and that Balboa only needed De Charsonville to provide a third opinion.[4] It was only midway through 2008 that De Charsonville became aware that the marks for the Nigerian and Uruguayan marks were inflated.[5]

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[3] 2d Trial Tr. 513:1–8. Attached hereto as **Exhibit B** are true and correct copies of relevant excerpts from the transcript of the second trial in *United States v. Balboa*, 12 Cr. 196 (PAC), which took place in December 2013 ("**2d Trial Tr.**").

[4] 2d Trial Tr. 511:17–512:11; 513:1–7.

[5] 2d Trial Tr. 528:3–13.

B. De Charsonville's misconduct was an isolated occurrence in an otherwise long and unblemished career

Prior to the conduct at issue in this action, for over 20 years, De Charsonville had an entirely unblemished career in the securities industry. As a well-respected and law-abiding professional, he had never been charged with a securities violation. In fact, not a single complaint had been lodged against him during his entire career.[6] De Charsonville's regrettable and costly lapse in judgment—allowing himself to become involved with Balboa's fraudulent scheme—was an isolated occurrence. Although the SEC delineated the different steps De Charsonville took in aiding and abetting Balboa, they all related to one underlying scheme, and only toward the end did De Charsonville realize that the marks were not just procedurally, but also substantively, flawed. This is not the kind of systematic wrongdoing that warrants an industry suspension or bar. The district court's reasoning in *SEC v. Benger* is germane:

> [The SEC] hopes to use all the transactions Mr. Powers handled while he was not registered to paint him as a repeat offender and thus likely to commit further violations in the future. But there is a subtle and significant flaw in that mode of analysis. Securities violations are not like bank robberies—isolated events, limited in time and space. They are often complex affairs, spanning extended periods of time, with multiple players. If the SEC's view is right, all securities law violators are automatically repeat offenders on the second and succeeding days of the scheme.

No. 09 C 676, 2014 WL 3954235, at *6 (N.D. Ill. Aug. 13, 2014) (emphasis added); *see also SEC v. Dibella*, No. 3:04CV1342 (EBB), 2008 WL 6965807, at *13 (D. Conn. Mar. 13, 2008) *aff'd*, 587 F.3d 553 (2d Cir. 2009) ("Although the SEC argues that DiBella's conduct was not an 'isolated occurrence', the Court is unpersuaded that DiBella's conduct involved the type of 'systematic wrongdoing' that would make a permanent injunction particularly appropriate. Although the SEC delineates the different steps DiBella took in aiding and

[6] De Charsonville Decl., ¶ 2. Attached hereto as **Exhibit C** is a true and correct copy of the Declaration of Gilles T. De Charsonville, executed January 23, 2015 ("**De Charsonville Decl.**").

abetting the primary violators in this case, DiBella's acts were all committed in a relatively short time period, and all related to the one underlying fraud—his fraudulent finder's fee. This distinguishes DiBella's conduct from cases where courts have found a defendant's systematic wrongdoing to warrant a permanent injunction."); *SEC v. 800america.com, Inc.*, 2006 WL 3422670, at *11 (denying permanent injunction after finding that SEC failed to demonstrate that two-and-one-half year fraudulent scheme was "more than an isolated incident"); *Monetta Fin. Servs., Inc. v. SEC*, 390 F.3d 952, 957 (7th Cir. 2004) (finding sanctions imposed by SEC excessive where misconduct took place over eight-month period several years prior, "making it a fairly isolated occurrence and suggesting that the likelihood of a future violation is slight").

In addition to De Charsonville's long unblemished career preceding the misconduct, the years that have passed since the misconduct without further incident deserve weight. *See SEC v. Dibella*, 2008 WL 6965807, at *13 ("[T]he passage of nearly 10 years without another violation weighs heavily against an injunction."); *SEC v. Jones*, 476 F. Supp. 2d 374, 384 (S.D.N.Y. 2007) ("The Court also notes that several years have passed since Defendants' alleged misconduct apparently without incident. This fact further undercuts the Commission's assertion that Defendants pose a continuing risk to the public.").

C. De Charsonville has acknowledged the wrongful nature of his conduct and his cooperation was critical to the SEC's case against Balboa

De Charsonville has fully confessed his liability and displayed deep remorse during his trial testimony. The candor, contrition, and shame in his trial testimony are self-evident.[7] De Charsonville has not only acknowledged the wrongful nature of his conduct, but has also extensively cooperated with the Government, providing key documents and testimony, which directly resulted in the successful prosecution of Balboa, the chief architect and beneficiary of

[7] *E.g.*, 2d Trial Tr. 479:12–480:10; 513:1–3; 516:13–22; 541:23–542:3; 737:24–738:3; 603:19–23.

the fraudulent scheme.[8] "Few facts available to a sentencing judge are more relevant to the likelihood that a defendant will transgress no more . . . than are those relating to the defendant's cooperation with authorities." *United States v. Frazier*, 971 F.2d 1076, 1085 (4th Cir. 1992) (citing *Roberts v. United States*, 445 U.S. 552, 557–58 (1980)). Furthermore, "[s]uch cooperation is important to the investigation, prosecution and punishment of frauds of this kind, and should be rewarded." *SEC v. Inorganic Recycling Corp.*, No. 99 CIV. 10159 (GEL), 2002 WL 1968341, at *5 (S.D.N.Y. Aug. 23, 2002).

D. De Charsonville no longer provides marks in his occupation and attests that he will not do so again

De Charsonville lost his employment at BCP Securities shortly after the SEC's complaint was filed and he remained unemployed for more than a year.[9] During that time he and his family lived off of their savings.[10] Although he obtained employment in January 2013, he has not come close to replicating his prior income, earning (before taxes) just €81,000 in 2013 and €59,000 in 2014, compared to $1,180,000 in 2010, his last full year of employment before the SEC filed its complaint.[11] In addition to the economic costs of his misconduct, De Charsonville continues to bear the reputational damage arising from his role in Balboa's scheme.

The essence of De Charsonville's misconduct was the passing off of marks as independent when in fact they were not. In his current occupational role, De Charsonville no longer provides any mark-to-market services, nor is he closely involved with the marking of any securities to market. Moreover, De Charsonville is willing to stipulate that he will not provide mark-to-market services in his occupation going forward. De Charsonville's change in his occupational role should weigh heavily against the imposition of an industry

[8] 2d Trial Tr. 35:21–36:7; 592:22–593:13; 597:1–12.
[9] 2d. Trial Tr. 446:19–20; 447:3–4.
[10] 2d. Trial Tr. 449:3–6.
[11] De Charsonville Decl., ¶ 1.

suspension or bar. *See Sec. & Exch. Comm'n v. Texas Gulf Sulphur Co.*, 312 F. Supp. 77, 90 (S.D.N.Y. 1970) (denying injunction against defendant, even though he had violated Section 10 and Rule 10b-5, because he was no longer in the employ of Texas Gulf Sulphur Company and hence no longer privy to material inside information); *SEC v. Luna*, No. 2:10-CV-2166-PMP-CWH, 2014 WL 2960451, at *4 (D. Nev. June 27, 2014) (finding likelihood of future violations insufficient to support permanent injunction where defendants changed occupations); *SEC v. McGinnis*, No. 13-CV-1047 AVC, 2013 WL 6500268, at *5 (D. Conn. Dec. 11, 2013) (finding that SEC failed to prove reasonable likelihood of future violations where "the act was isolated in the sense that it was in one stock, in a company in which McGinnis is no longer employed. In other words, the fox is out of the henhouse and the henhouse is now locked.").

SPECIFIC RESPONSES

Paragraph 1: Between 2003 and December 2011, Respondent was employed in Madrid, Spain as a broker by BCP Securities, LLC, a Commission-registered broker-dealer headquartered in Greenwich, Connecticut. During the 2007-2008 period, Respondent was a FINRA-registered Foreign Associate. Respondent currently resides in Madrid, Spain.

Response to Paragraph 1:

Respondent admits this paragraph.

Paragraph 2: Apart from acting as a commissioned-salesperson, brokering the purchases and sales of emerging market bonds on behalf of clients, during 2007-2008, Respondent also provided his clients with an uncompensated mark-to-market service by which he would provide marks, or valuations, of securities in the client's portfolio.

Response to Paragraph 2:

Respondent admits this paragraph.

Paragraph 3: On July 6, 2015, the United States District Court for the Southern District of New York issued an Opinion and Order granting the Commission partial summary judgment against Respondent ("Opinion & Order") in the civil action titled Securities and Exchange Commission v. Michael Balboa, et al., Civil Action Number 11 Civ. 8731 (PAC). On July 17, 2015, the Court entered a final judgment against Respondent, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), 206(2) and 206(4) of the Advisers Act, and Rule 206(4)-8 thereunder.

Response to Paragraph 3:

Respondent admits this paragraph, but notes that the Opinion & Order specifically reflects that the "SEC has assured De Charsonville that the injunction sought does not include an industry suspension or bar in this proceeding," and, on that basis, De Charsonville did not oppose a permanent injunction against future violations.[12]

Paragraph 4: The Commission's complaint alleged that, beginning sometime in 2007, Respondent began to provide a mark-to-market service to his client, Michael Balboa ("Balboa"), portfolio manager for a group of now-defunct and unregistered emerging market credit funds, Millennium Global Emerging Credit Fund, Ltd., Millennium Global Emerging Credit Fund, Ltd. and Millennium Global Emerging Credit Fund, LP, (collectively, the "Fund"), organized in a master-feeder structure with reported assets of approximately $837 million in August 2008 and approximately 180 investors. Each month, Balboa asked Respondent to provide marks for two highly illiquid securities in the Fund's portfolio and to supply them to the Fund's independent valuation agent which was retained to calculate the Fund's monthly Net Asset Value ("NAV"), information that the Fund transmitted to its investors and prospective investors. As the Court found in its Order & Opinion, for several months in 2008, instead of independently valuing the two illiquid Fund securities, Respondent took marks supplied by Balboa and sent them to the independent valuation agent as his own. As the Opinion & Order explains further, those marks were significantly inflated and resulted in the calculation of a false and misleading Fund NAV and Fund returns.

Response to Paragraph 4:

Respondent admits this paragraph.

AFFIRMATIVE DEFENSES

1. The relief sought by the Division of Enforcement is barred by the five-year statute of limitations under 28 U.S.C. § 2462.

2. This Administrative Proceeding violates one or more provisions of the United States Constitution, including the Due Process Clause and/or the Appointments Clause.[13]

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[12] Ex. A, Opinion & Order, at 6 n.6.

[13] *See Duka v. SEC*, No. 15 CIV. 357 RMB SN, 2015 WL 4940083, at *3 (S.D.N.Y. Aug. 12, 2015); *Hill v. SEC*, No. 1:15-CV-1801-LMM, 2015 WL 4307088, at *19 (N.D. Ga. June 8, 2015).

Dated: New York, New York
October 6, 2015

Respectfully submitted,

HERBERT SMITH FREEHILLS NEW YORK LLP

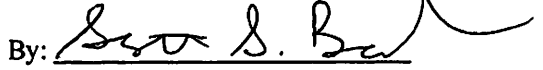
By: 

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Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

MICHAEL R. BALBOA and GILLES T. DE CHARSONVILLE,

Defendants.

11 Civ. 8731 (PAC)

OPINION & ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Plaintiff Securities and Exchange Commission ("SEC") moves for partial summary judgment in this civil enforcement action against Defendant Gilles De Charsonville. The SEC seeks an order granting a permanent injunction against future violations of the Exchange Act and the Advisers Act,[1] an award of disgorgement with prejudgment interest, and the imposition of third tier penalties against De Charsonville. For the following reasons, the motion is granted.

BACKGROUND[2]

From 2003 through December 2011, De Charsonville worked for BCP Securities, LLC ("BCP"), a broker-dealer with headquarters in Greenwich, Connecticut. 56.1 Statement ¶ 2. From 2007-2008, he worked out of BCP's Madrid office brokering sales and purchases of

[1] De Charsonville does not oppose the SEC's request for a permanent injunction. Def. Mem. at 1 n.1.

[2] The facts stated here are based on the SEC's Local Rule 56.1 Statement, which De Charsonville does not dispute. Def. Mem. at 1 n.2.

emerging market bonds on behalf of clients. *Id.* He earned commissions on these sales and provided his clients with a complementary mark-to-market service, through which he would provide valuations of securities in the client's portfolio. *Id.* During this period, De Charsonville was registered with FINRA as a Foreign Associate. *Id.*

From December 2006 until October 2008, Michael Balboa was a managing director of Millennium Global Investments, an investment manager in London, England. *Id.* ¶ 1. Balboa managed the portfolios for several Millennium Global funds (collectively, the "Funds"). *Id.* The Funds operated from December 2006 until October 2008, when they were liquidated. *Id.* Investors were told Balboa had no role in valuing assets and simply managed the Funds' investments. *Id.*

GlobeOp Financial Services, LLC ("GlobeOp"), a financial services firm that provides independent valuation services to financial services entities, acted as the Funds' independent valuation agent, pursuant to a Valuation Services Agreement operative from December 2006 until October 2008. *Id.* ¶ 3. In this capacity, GlobeOp provided independent valuations of the Funds' holdings and calculated the Funds' net asset value each month. *Id.* In order to perform these services for illiquid securities, GlobeOp would solicit the opinions of brokers or counter-parties trading such securities regarding the value of the securities. *Id.* Under the Valuation Services Agreement, if Balboa and a counter-party disagreed regarding valuation, the counter-party's valuation would control. *Id.* De Charsonville served as a counter-party source for valuing some of the Funds' holdings. *Id.* GlobeOp expected that the valuations provided by De Charsonville were accurate and were not influenced by Balboa. *Id.*

On March 19, 2013, Balboa was charged in a superseding indictment with securities fraud and wire fraud, conspiracy to commit the same, and investment adviser fraud. *Id.* ¶ 5. On December 18, 2013, a jury found Balboa guilty of all five charged offenses. *Id.* ¶ 6.[3] De Charsonville testified at both trials after obtaining a non-prosecution agreement pursuant to which he will not be charged criminally for any conduct described in his testimony in exchange for his full cooperation, including with the SEC. *Id.* ¶ 8.

De Charsonville testified at trial: In 2006, Balboa suggested De Charsonville to GlobeOp as a broker who could provide valuations for the Funds. *Id.* ¶ 11. Each month, De Charsonville would receive a list of 15 to 20 securities from GlobeOp, of which he was to provide valuations at the end of the month. *Id.* For a typical valuation, De Charsonville would obtain information by consulting Bloomberg, but De Charsonville did not follow this procedure for two securities. *Id.* ¶ 12. For the Nigerian warrants and the Uruguayan warrants held by the Funds,[4] Dc Charsonville simply used valuations supplied by Balboa. *Id.* ¶ 13.

De Charsonville agreed to this approach with Balboa in March or April 2007. *Id.* ¶ 14. He also agreed not to inform GlobeOp that the valuation came from Balboa. *Id.* In January 2008, De Charsonville began to suspect that Balboa's valuations were not accurate. *Id.* ¶ 17. In May 2008, GlobeOp contacted De Charsonville to question the valuation he had provided. *Id.* ¶ 18. De Charsonville sought out the true valuation for that security from a third party, and learned that Balboa's valuations were "grossly inflated." *Id.* ¶¶ 18-19. He then asked Balboa to fabricate a justification for him to pass on to GlobeOp to support the valuation. *Id.* ¶ 19. De

[3] A previous trial ended in a mistrial. *Id.* ¶ 6 n.3.

[4] De Charsonville began providing Balboa-supplied valuations on the Uruguayan warrants beginning in April 2008. *Id.* ¶ 13. He provided these valuations monthly for months end May 2008 through September 2008. *Id.* ¶ 16.

Charsonville continued to participate in Balboa's scheme even after he realized its full extent. *Id.* ¶ 20. One month when Balboa could not provide valuations, De Charsonville reassured him that he would simply "invent a story for GlobeOp." *Id.*

De Charsonville testified that he continued to participate in the fraud because he did not want to lose Balboa as a client. *Id.* ¶ 32. De Charsonville received compensation on a commission basis earned from trades placed through him. *Id.* ¶ 33. For 2007-2008, the total commissions De Charsonville earned through Balboa's trading amounted to $543,046. *Id.*

In April 2008, an auditor from Deloitte & Touche, who was conducting an independent audit of Millennium Global, sought to confirm the valuations De Charsonville had provided. *Id.* ¶ 22. In response, De Charsonville provided Deloitte with the valuations he had received from Balboa and provided to GlobeOp. *Id.* ¶ 23.

When the Funds collapsed, Balboa warned De Charsonville that the Funds' liquidators may ask him about the valuations he provided. *Id.* ¶ 25. Balboa offered to provide De Charsonville with two documents he created with information about the warrants to conceal De Charsonville's lack of knowledge about the warrants. *Id.* Balboa also showed De Charsonville "damning" email correspondence between the two, which was in the possession of the Funds' liquidator. *Id.* When contacted, De Charsonville lied to the Funds' CEO, concealing the fact that the valuations had come from Balboa and inventing explanations for the valuations. *Id.* ¶ 26.

De Charsonville subsequently lied and concealed the scheme in conversations with Spanish securities regulators when they contacted him in February 2011. *Id.* ¶¶ 27-29. Similarly, after the SEC sued De Charsonville and Balboa and after the Department of Justice charged Balboa criminally, De Charsonville lied, and then began to tell "half-truth[s] in a quest

for leniency," asking his lawyer to tell prosecutors that De Charsonville understood GlobeOp to be a part of Millennium Global and not an independent entity. *Id.* ¶ 30. De Charsonville provided the full truth a year later, in January 2013, after prosecutors refused to give him a deferred prosecution agreement. *Id.* ¶¶ 30-31. De Charsonville continues to work as a broker selling emerging market securities. *Id.* ¶ 34.[5]

As previously indicated, *see supra* note 2, De Charsonville does not dispute the facts provided in the SEC's 56.1 Statement. *See* Def. Counterstatement at 1. De Charsonville, however, submitted a counterstatement with "additional material facts," including that he has two sons, and while he still works in the securities industry, he earns significantly less than he did previously—in 2013, he made €81,000 and in 2014 he made €59,000, compared with the $1,180,000 he earned in 2010. *Id.* ¶¶ 1-2. He also submitted that he provided the Government with numerous documents that would not otherwise have been available to the Government, and that his cooperation was critical to the successful prosecution of Balboa. *Id.* ¶¶ 5, 7. These statements are supposed to address the SEC's request for disgorgement and the imposition of civil penalties which De Charsonville claims are excessive.

DISCUSSION

I. Applicable Law

A party moving for summary judgment "is entitled to judgment as a matter of law" when there is "no genuine dispute as to any material fact." Fed. R. Civ. P. 56(a). In determining whether a genuine dispute exists, the court "construe[s] the facts in the light most favorable to the non-moving party and must resolve all ambiguities and draw all reasonable inferences against the movant." *Pandora Media, Inc. v. Am. Soc'y of Composers, Authors & Publishers,*

[5] The SEC has incorrectly numbered this paragraph number 33.

785 F.3d 73, 77 (2d Cir. 2015) (internal citations and quotation marks omitted). Where the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party," summary judgment must be entered in the moving party's favor because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The moving party prevails when "'the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.'" *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm'n*, 768 F.3d 183, 192 (2d Cir. 2014) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

II. Analysis

De Charsonville concedes liability and does not oppose a permanent injunction against future violations[6] or an award of prejudgment interest. Def. Mem. at 1 n.1, Reply at 1. De Charsonville opposes disgorgement and argues that the civil penalties sought are excessive. Def. Mem. at 4-12. Accordingly, the Court considers only the appropriateness of the disgorgement award and the civil penalties sought by the SEC.

A. Disgorgement

The SEC seeks disgorgement in the amount of $297,174, the amount De Charsonville received in commissions from trades he executed for Balboa in 2008, but not 2007. *See* Garcia Decl. ¶ 5. De Charsonville argues that disgorgement should be denied because the SEC "has failed to establish the requisite causal nexus between the commissions and the wrongful conduct at issue in this action, *i.e.* that De Charsonville would not have received these commissions *but*

[6] The SEC has assured De Charsonville that the injunction sought does not include an industry suspension or bar in this proceeding. Reply at 2 n.3.

for his role in Balboa's fraud." Def. Mem. at 4. De Charsonville disputes the propriety of determining disgorgement based on trades with Balboa because De Charsonville and Balboa's relationship was not dependent upon the provision of the inflated valuations and because Balboa was De Charsonville's client before the two engaged in the fraudulent scheme. *Id.* at 5.

This argument misunderstands the burden-shifting nature of disgorgement. It is true that the Government "must distinguish between the legally and illegally derived profits" when seeking disgorgement, *S.E.C. v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013) (internal citation and quotation marks omitted), and that the disgorgement award cannot exceed the amount acquired through wrongdoing because it is a remedial, rather than punitive, remedy, *S.E.C. v. Cavanagh*, 445 F.3d 105, 116 n.25, 117 (2d Cir. 2006) (internal citations omitted). But disgorgement need only be a "reasonable approximation of profits causally connected to the violation," *S.E.C. v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996) (internal citation and quotation marks omitted), and once the SEC has met its burden of reasonable approximation, the party opposing disgorgement must demonstrate that his gains were "unaffected by his offenses," *Razmilovic*, 738 F.3d at 31-32 (internal citations and quotation marks omitted). "Any risk of uncertainty in calculating disgorgement should fall upon the wrongdoer whose illegal conduct created that uncertainty." *S.E.C. v. Contorinis*, 743 F.3d 296, 304-305 (2d Cir. 2014) (internal alterations and quotation marks omitted) (citing *First Jersey*, 101 F.3d at 1475).

Here, De Charsonville's illegal conduct directly created any uncertainty. His participation in the scheme with Balboa, animated by a desire to maintain Balboa as a client, led to profits in an amount difficult to discern. De Charsonville has failed to rebut the SEC's demonstration of a causal connection between the fraud and the commissions, and has simply asserted the speculative notion that Balboa may have directed the same number of trades through

De Charsonville in the absence of the scheme. That speculation, however, does not establish that a disgorgement award is improper here. Besides, De Charsonville himself established the requisite causal connection when he testified that Balboa was "one of the top five clients" with whom he sought to maintain a solid relationship, and that he was "an active client, a good client, and I wanted to keep him that way." Tr. 493:15-17, 513:9-10. In light of De Charsonville's testimony that he engaged in the scheme to maintain his relationship with Balboa and so that Balboa would continue to place trades through him, there is a sufficient causal connection between the fraud and the commissions.

The SEC has demonstrated that the amount of the award is reasonable. The SEC did not seek De Charsonville's whole compensation, nor did it seek to include commissions from Balboa's trades prior to the year 2008, reflecting the fact that De Charsonville's relationship with Balboa predated the scheme. The amount requested by the SEC, which represents approximately 12.4 percent of De Charsonville's total compensation for 2008, demonstrates the SEC's best efforts to isolate the profits De Charsonville earned through the fraud, and De Charsonville must bear the risk of any uncertainty. Accordingly, De Charsonville is ordered to pay $297,174 in disgorgement.

De Charsonville does not oppose the imposition of prejudgment interest. The SEC has calculated prejudgment interest at $67,261.46, using the IRS underpayment rate and the dates January 1, 2009, through November 30, 2014. Brown Decl., Ex. K. Prejudgment interest prevents the wrongdoer from "obtaining the benefit of what amounts to an interest free loan procured as a result of illegal activity." *S.E.C. v. Alt. Green Techs., Inc.*, 2014 WL 7146032, at *3 (S.D.N.Y. Dec. 15, 2014) (internal citations and quotation marks omitted). The Court finds the imposition of prejudgment interest appropriate, and the SEC's calculations thereof correct.

See, e.g., S.E.C. v. Credit Bancorp, Ltd., 2011 WL 666158, at *3 (S.D.N.Y. Feb. 14, 2011).

B. Civil Penalties

Under the Exchange Act, the Court may impose civil monetary penalties for violations of the securities laws. 15 U.S.C. §§ 77t(d), 78u(d)(3). The purpose of civil penalties is to "deter future violations, . . . encourag[e] investor confidence, increase[e] the efficiency of financial markets, and promot[e] the stability of the securities industry." *S.E.C. v. Metcalf*, 2012 WL 5519358, at *7 (S.D.N.Y. Nov. 13, 2012) (internal citations and quotation marks omitted). In determining civil penalties, which are discretionary, the Court considers (1) the egregiousness of the conduct at issue; (2) the degree of scienter; (3) the losses or risk of losses created by the conduct; (4) the isolated nature or frequency of the conduct, if repeated; and (5) defendant's demonstrated current and future financial condition and present ability to pay. *See S.E.C. v. Wyly*, 56 F. Supp. 3d 394, 407 (S.D.N.Y. 2014). The Court may also take into account the defendant's cooperation and acceptance of responsibility, *Alt. Green Techs., Inc.*, 2014 WL 7146032, at *4, as well as other remedies already imposed to determine whether a penalty is "unduly harsh under the circumstances," *Wyly*, 56 F. Supp. 3d at 433-34. Third tier penalties, the most severe, are applicable where "fraud, deceit, manipulation, or deliberate and reckless disregard of a regulatory requirement" formed a part of the violation and the violation caused, or created a significant risk of, substantial losses to others, and authorize fines in the amount of up to $130,000[7] for each violation. 15 U.S.C. §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii).

The SEC seeks to impose third tier penalties for De Charsonville's violations. Pl. Mem. at 22-25. In calculating the total amount of penalties, the SEC seeks to have each of De Charsonville's transmissions of Balboa-supplied valuations to GlobeOp treated as a separate

[7] This amount takes into account the required adjustment for inflation. *See* Pl. Mem. at 22 n.11.

violation, to reach a total award of $2,600,000. *Id.* at 23. De Charsonville opposes both the imposition of third tier penalties and the method of calculating the number of violations.

"The civil penalty assessed is a fact-specific determination and the facts here do not merit the maximum penalty." *S.E.C. v. 800america.com, Inc.*, 2006 WL 3422670, at *12 (S.D.N.Y. Nov. 28, 2006). The Court agrees with the SEC that third tier penalties are appropriate here, but does not agree that each valuation transmission should be considered a separate violation. *See, e.g., S.E.C. v. Elliot*, 2012 WL 2161647, at *11 (S.D.N.Y. June 12, 2012) (declining to impose higher tier penalties because "given the number of transactions and the amounts that could be assessed per transaction, such an award would be unduly penalizing."). In determining the disgorgement award, the Court considered the scheme in its entirety with respect to the causal connection between the fraud and the alleged profits, finding that even if Balboa may have executed some number of trades through De Charsonville absent the fraud, it was reasonable to attribute all commissions earned from Balboa's trades during 2008 as unlawful profits from the fraud. The Court will continue to view the fraud in its entirety. In addition, this is De Charsonville's first violation; even though he stumbled initially, he ended by cooperating extensively with the SEC and the Department of Justice;[8] the fraud was limited in time; and he is already paying a significant disgorgement award. Accordingly, the Court will consider transmission of fraudulent valuations for the Nigerian warrants as one violation and transmission of fraudulent valuations for the Uruguayan warrants as a separate violation, and will apply the maximum third tier penalty to each of these violations, resulting in a penalty of $260,000. *See,*

[8] The SEC urges the Court to consider that De Charsonville already received the benefit of his agreement to cooperate because he now faces no criminal sanction, unlike the defendants in the cases relied upon by De Charsonville to support his argument that the requested penalties are too high. Reply at 6-8. That the Department of Justice agreed not to charge De Charsonville criminally cannot be held against De Charsonville financially.

e.g., Alt. Green Techs., 2014 WL 7146032, at *6 (finding that "imposing only one maximum civil penalty will serve as a sufficient deterrent, both specifically and generally, to future securities violations"). The Court believes such a penalty is sufficient to deter future such conduct and to penalize De Charsonville for his violations, without imposing undue hardship.

CONCLUSION

For the foregoing reasons, the SEC's motion for partial summary judgment is granted. De Charsonville is permanently enjoined from violating: Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5; Sections 206(1), (2), and (4) of the Advisers Act, 15 U.S.C. §§ 80b-6(1), (2) and (4), and Rule 206-4(8) thereunder, 17 C.F.R. § 275.206(4)-8(a)(2); and FINRA Rule 5210. De Charsonville is ordered to pay disgorgement in the amount of $297,174 plus prejudgment interest in the amount of $67,261.46, and he is ordered to pay third tier civil penalties for two violations, in the amount of $260,000.

Dated: New York, New York
July 6, 2015

SO ORDERED

PAUL A. CROTTY
United States District Judge

Exhibit B

You will also see Balboa's own words on paper. You'll see them in countless e-mails directing his accomplices, DeCharsonville and Pratt, on the Nigerian warrant prices to provide to GlobeOp, directing them.

You will see Balboa directing DeCharsonville as to the lies to tell GlobeOp when GlobeOp started asking questions because of these massive increases in the warrant supposed prices. And you'll see documents that Balboa created in 2010 with bogus explanations for his inflated valuation to try to cover up his scheme. Lies that Balboa sent to DeCharsonville to get DeCharsonville to lie for him and correspondence between Balboa and Nesti in furtherance of Balboa's coverup.

Witnesses. You will also hear from several witnesses at this trial. Among them you'll hear from victim investors who trusted this defendant with their money, who relied on his representation about the independent valuation process and the fund's performance. You'll hear also from a witness from GlobeOp, the valuation agent who will tell you how the process was supposed to work. You'll also get to hear from the head of compliance of Millennium, the firm where Balboa worked.

Now, we will also prove Balboa's guilt through the testimony of insiders, DeCharsonville, Pratt and Nesti, the accomplices who worked with Balboa in this scheme. These witnesses will be able to tell you details of how it worked and what Balboa told them, things that can only come from those who

worked on the inside. Each of these witnesses has either been granted immunity or has entered into an agreement with the government that requires them to tell the truth about all their actions. And if they do that they won't be prosecuted for their involvement with Balboa in Balboa's fraud. They are being called to testify because they have firsthand knowledge of the crimes Balboa committed since Balboa chose them.

Now, because of what these witnesses have done, the government asks that you scrutinize their testimony carefully. Because when you scrutinize their testimony you will see that these witnesses are supported by the evidence, the recorded conversations, the e-mails and other documentary evidence and other witnesses. These individuals will tell you about Balboa's fraudulent scheme to manipulate the valuation process and the value of the Nigerian warrant.

Documents. Finally, ladies and gentlemen, as I've referenced, you are going to see a lot of documents. Some of the documents I've already mentioned and then there were document that were sent to the investors that had Balboa's lies in them and lots of e-mails between the relevant players and you'll also see Balboa's false coverup document that I alluded to earlier. All of this evidence together will show you how the defendant committed his fraud and how he directed his accomplices to lie for him to manipulate the fund's valuation process and make him more money.

(In Open Court)

GILLES DE CHARSONVILLE,

called as a witness by the Government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MILLER:

Q. Good afternoon, sir.

A. Good afternoon.

Q. How old are you?

A. I am 51.

Q. What country are you a citizen of?

A. I am from France.

Q. Where are you currently living?

A. Sorry.

Q. Where are you currently living?

A. I live in [redacted]

Q. What languages do you speak, sir?

A. I speak French, English, Spanish.

Q. Is English your native language?

A. No, it's not.

Q. Are you fluent in it?

A. I consider myself as a fluent but it's not my native language.

Q. Are you comfort testifying in it today?

A. Yes, I am.

Q. Mr. De Charsonville, when did you arrive here in New York to come here to testify?
A. I arrive on Friday last Friday.
Q. Sir, how far did you go in school?
A. Following high school I studied five years which it lead me to a diploma in French business school, an MBA.
Q. And where did you go to high school?
A. I went to high school in little town 20 miles north of Paris called Isle Adam. That would be written I-s-l-e, space, A-d-a-m.
Q. Did you go no university in France as well?
A. Yes, I went to a business school there.
Q. Did you get a business degree?
A. Yes.
Q. When was that?
A. 1986.
Q. After you got your business degree in 1986 did you subsequently get a graduate degree?
A. Well, the same year since this MBA program was an agreement between my business school and a university in San Francisco called USF and this program wrote us during this second and third year of the French business school to go and follow some MBA program in U.S. states. So I did get my MBA more or less at the same date so my degree is a diploma of French business school.

Q. What do you do for a living, sir?
A. I work for a company currently which I just joined roughly two weeks ago called Newscape Capital Group.
Q. What do you do for Newscape Capital Group?
A. I am part of execution advisory team specialized on fixed income so that would be -- and I am the best on merging side of emerging markets.
Q. Emerging markets you said?
A. Correct.
Q. What does that generally mean?
A. Emerging market, fixed income rating that would be Latin America, Eastern Europe and some Asian countries.
Q. And you said that you have been in Newscape for the last two weeks. Where were employed prior to the last two weeks?
A. Before Newscape I was employed from January 2013 until I joined Newscape in a company called Aalto Invest which is an asset management company in between UK and Switzerland.
Q. And before Aalto Invest what did you do?
A. Before Aalto Invest I did remain unemployed all over 2012 during the year.
Q. And prior to 2012 where did you work?
A. Prior to 2012 I did work for a small U.S. investment bank, a boutique type of company called BCP Securities LLC for which I worked from summer of 2003 until December 2013 in the European office which was in Madrid, Spain.

Q. What was your position there?
A. I was a managing director.
Q. How did your employment at BCP Securities come to an end?
A. In December 2011 I was let go from BCP Securities.
Q. Were you let go for cause?
A. Yes. I was put on disciplinary --
Q. Why?
A. That was following something which happened on this December 2nd. On December 2nd I was charged by the SEC, the U.S. Securities and Exchange Commission.
Q. So on December 2, 2011, correct?
A. Correct.
Q. You were charged by the United States Securities and Exchange Commission?
A. Correct.
Q. Why were you charged by the Securities and Exchange Commission?
A. Well, I was part of a scheme, some sort of a scheme involving manipulating the valuation of a fund built in UK.
Q. What fund was that?
A. Name of the fund was Millennium Global Emerging Credit fund.
Q. And if you can just generally describe very briefly what was the scheme that you were involved in?
A. Very briefly it was about manipulation of the valuation of

some of the assets held by the funds and that will mean that if you manipulate a value and give a wrong value and the bond will be manipulating the net asset of the fund.

Q. Did you do this alone or with anybody else?

A. Did I that with someone else.

Q. Who?

A. Someone was working into this fund called Michael Balboa.

Q. And who is Mr. Balboa?

A. Mr. Balboa is, was the fund manager of the Millennium Global Emerging Credit fund.

Q. Do you see Mr. Balboa in the courtroom today?

A. Yes, I do.

Q. Can you please describe him?

MR. TACOPINA: Your Honor, we'll stipulate that Mr. De Charsonville knows Mr. Balboa.

THE COURT: All right. So stipulated.

MR. MILLER: Thank you.

Q. Now, sir, are you married?

A. Yes, I am.

Q. How long have you been married?

A. [redacted].

Q. Do you have any children?

A. I do.

Q. How old are they?

A. [redacted].

Q. Does your wife work outside the home?

A. [redacted]

Q. When you were unemployed as you testified to earlier how did you support yourself, your wife and your two children?

A. Mainly with my savings since unemployment benefits in Spain a very low.

Q. Have you ever maintained any bank accounts overseas?

A. Yes.

Q. Where?

A. [redacted]

Q. Was that declared bank account that you had when you were living and working in Spain?

A. The account in [redacted] was always declared to the Spanish authorities because it was quite an active account. And the account in [redacted] was never declared to the UK or

being scared of you know being finished and being charged.
Q. So but then you did as you mentioned meet with the government, you, personally, in January of this year, right?
A. Yes.
Q. And who did you meet with?
A. In January of 2013 I met someone from the Department of Justice called Steve Kwok.
Q. And was anybody from the Securities and Exchange Commission present?
A. Yeah. I also met Mr. Conway from the Securities and Exchange Commission and Mr. Ghiozzi from the U.S. Postal Inspection Service and that's it.
Q. And Mr. Conway and Mr. Ghiozzi are, in fact, sitting at counsel table?
A. Correct.
Q. And where was this meeting held?
A. This meeting was held in Madrid, Spain at the U.S. Embassy.
Q. Why was that?
A. Well, when my lawyer and my attorney was contacted by the U.S. government to see if I would be keen to meet them they did mention at the place of our choice. And so following his advice we decide to have the meeting in Madrid since I was living there and I'm still living there.
Q. How long did that meeting last?
A. This meeting did last two days.

Q. And, approximately, how many hours each day?
A. In between three to five hours.
Q. And what, generally, happened?
A. Well, during this meeting I was given a chance to come clean with my wrongdoing to this case and to tell the truth about my real responsibly.
Q. Who was asking the questions during that meeting?
A. Mr. Kwok was asking questions.
Q. Mr. Kwok who used to be with the United States Attorney's office?
A. Yes.
Q. Who was providing the answers to those questions?
A. I was providing the answers.
Q. Were you truthful in this meeting?
A. Yes.
Q. Did you leave anything out?
A. No.
Q. And I should say did you, intentionally, leave anything out?
A. No.
Q. And did you conduct that meeting -- well, let me ask you this. Why all of a sudden now you come to meet with the prosecutors in January of 2013 you decide I am going to come clean, I am going to be truthful?
A. Well, I did view this meeting as the government giving me a

chance to come clean. Basically, that's like you have done something wrong for a certain number of years which makes that you relieve yourself in a lie, meaning that you are in some kind of a state of chaos.

Q. State of what? I'm sorry.

A. Chaos. I don't know if --sorry.

Q. You were being cowardly, is that what you're saying?

A. No. No. Chaos is like a state of everything is broken. Sorry. Chaos. Meaning that once you are given the possibility that tell the truth then you feel you know this chaos is any.

Q. And did you conduct that meeting, the meeting in January 2013 under the terms of any agreement?

A. Yes.

Q. What's the agreement called?

A. It's called a non proffer agreement?

Q. A proffer agreement?

A. Sorry. A proffer agreement.

Q. Can you take a look in your binder that's labeled 3500 material, 3500-9 for identification.

A. Yes.

Q. You recognize this?

A. Yes, I do.

Q. Is that the proffer agreement?

A. Yes, it is.

Q. What's your understanding of the terms of this proffer

or '86 I did very sporadically smoke marijuana or take some kind of drugs and this was more than 20 years ago.

Q. Done that since?

A. Sorry?

Q. Have you done that since?

A. No.

Q. Now, I want to turn to your work at BCP Securities. Can you remind us again when you were working there?

A. I did work at BCP Securities from more or less summer 2003 until December 2011.

Q. OK. And when you joined BCP in 2003 what, if any, work experience did you have in the industry?

A. Following my military service I did start working for a French security house doing three years. One year in Paris, two years in London and then following a one year backpacking trip in Latin America. I worked during eight years for a French bank and that will be three years in Paris and five years in London. And then I joined doing four years in London South African bank and that would be until beginning of 2003.

Q. OK. What was your total compensation at BCP?

A. The compensation system at BCP was paid on commission, so it was never the same each month. But I will say roughly along the eight years it would be $500,000 gross before tax I mean, a year.

Q. When you say it was based, usually based on a commission,

performed something called mark to market services for your clients?

A. Yes. So there was four services that you would provide only to the client asking for it which we call mark to market. But, in fact, that's providing marks to the portfolio of clients. And by providing marks I mean giving valuation of the different securities or bonds that they would ordinary in the portfolio.

Q. When you say "giving valuation" you are giving them prices, right?

A. Correct.

Q. Now, as part of these four areas that you've described generally were you working alone or as part of a team?

A. I was part of a team.

Q. And how big was the team that you were part of?

A. At BCP Securities I was being the European office and the main office being based in Connecticut, we were more or less 50 working for the bank worldwide. And out of the 50 there would be more or less 20 persons doing the same activity at mine which is asset trader.

Q. Now, I'd like to turn to a different topic area. When did you have your first interaction with the defendant, Michael Balboa?

A. I had my first interaction with Mr. Balboa when he joined a client of mine in a phone called Rainbow that would be,

approximately, maybe in 2005.

Q. And what was Rainbow to your knowledge?

A. Rainbow was a hedge fund managed out of London and Monaco and was already a lan of mine.

Q. Where is Monaco?

A. Monaco is south of France.

Q. It's a small little country, correct?

A. Yes.

Q. And what were the kinds of services that you were providing to Mr. Balboa when you first started dealing with him?

A. I was providing the same kind of services which I did describe before, so that will be -- trading activity or -- activity of securities providing the research and maybe selling new issues. So that was the three services. But I would also provide the valuation services.

Q. What do you mean by "valuation services"? Is that also again providing prices?

A. Yes.

Q. And you said -- I am sorry -- did you say that you provided himself research as well?

A. Yes.

Q. What do you mean by that?

A. I mean this is the research returned by, on a list covering all the emerging market countries. So this could be a research about sovereign countries or research about companies which

A. Millennium Global Partner.

Q. After he joined Millennium Global in London, did there come a time when he contacted you again?

A. Yes.

Q. When, approximately, was that?

A. December 2006.

Q. How was your business relationship affected after the defendant joined Millennium?

A. Well, he was not -- it was not really affected since once he joined Millennium the business relationship I had with Rainbow started the same way with Millennium.

Q. Same kind of services that you were providing, sir?

A. Correct.

Q. All right. Let's fast forward now to the year 2008. As of 2008 how big a client had Mr. Balboa become?

A. Out of the 20 active clients he was not the best client but he was among the five best or for me he was an important client.

Q. So among the top five?

A. Among the top five.

Q. Now, let's talk about what we referred to earlier as mark to market. Did there come a time when you began providing Balboa mark to market services while he was at Millennium?

A. Yes.

Q. When was that?

as a broker which could provide the prices for the valuation of the fund once a month.

Q. For GlobeOp to value the fund but you were giving the price of the securities?

A. Correct.

Q. How much did you charge Mr. Balboa for this mark to market service that you were providing to him to GlobeOp?

A. You don't charge for that service.

Q. Why is that?

A. It's -- I mean it's not a service which is -- it was not something unusual. A few clients asked for the service so it's like a service that you are doing out of courtesy just because you have a relationship with a client and you want to protect your relationship by providing something which he needs.

Q. As you mentioned earlier Mr. Balboa was one of the top five clients you wanted to keep him happy, right?

A. Correct.

Q. How often did you provide this service to Mr. Balboa?

A. Once a month. Usually the lists were received the last day of the month.

Q. Of course we're talking about when he was at Millennium. Over what time period did you provide him the mark to market service while he was at Millennium?

A. From December to 2006 until October 2008.

Q. Do you recall how this topic of providing mark to market

sometimes from 2007 there was nothing on the Nigerian warrant.
Q. What about in 2008?
A. Same -- nothing on it.
Q. And this ALL-Q, is that related to Bloomberg?
A. Yes.
Q. You didn't know what the prices on the securities were?
A. Yes.
Q. What if anything did you tell Mr. Balboa, the defendant, about the difficulties you had in finding any prices for the Nigerian warrant?
A. Well, that was not in 2008. That was in 2007. And I believe maybe at the beginning of the year during that process, there was never any questioning or question about this particular one since it wasn't on the screen. But at one point whether it was in March or April or slightly after of 2007, when going around and coming to Nigeria, looking at the screen, I find out that there is nothing. And that's how we started, really, because then I told Mr. Balboa at that particular time, sorry, Mike, I don't see anything on this one. I can't help you. And that's when -- again, I am not exactly sure of when it happened in 2007. That's when he told me that, well, Gilles, I need a third opinion. Do you mind putting the same quote as two other brokers just gave me?
Q. You are talking about the Nigerian warrants, you said he told you had gotten two other brokers to give him quotes on the

Nigerian warrant?

A. Correct.

Q. Did you know at the time who those other two brokers were?

A. No.

Q. Sitting here today, do you know whether what he told you about having two other brokers for the Nigerian warrant is true?

A. No.

Q. What did you do after this conversation that you had with Mr. Balboa?

A. I decided to agree and do what he was asking me to do.

Q. Did you have an understanding at the time of whether what you were doing in terms of what you doing of basically taking his prices for the Nigerian warrant was in any way improper?

A. Yes. I understood it was improper since for the first time on this particular asset I was going to give something which was not coming from my own knowledge and was coming from him. So that was improper.

Q. And you were supposed to be providing an independent price --

A. Exactly, and that would not be independent anymore.

MR. TACOPINA: Object to the leading.

THE COURT: Overruled.

Q. Mr. De Charsonville, why then did you agree to go along with Mr. Balboa's request?

A. Well, again, you know this is a decision that you might take in one second or two seconds that is going to change your life forever, but I agreed because, initially, I thought it was not a big deal -- the process was improper since I didn't know if -- the quote was not coming from myself but I thought it was not a big deal, but I did trust him what he was telling me was true that he had really two quotes from two other brokers, so I thought it was not a big deal at first, and the simple reason being that in the beginning of 2007, he was already an active client, a good client and I wanted to keep him that way.

Q. You said initially you thought it was not a big deal because when he first told you this he said he had two brokers. Did there come a time where you did think it was a big deal?

A. I mean after?

Q. Yes.

A. Yes, yes.

Q. So did you want to keep him happy as a client, is that why you did it?

A. Yes.

Q. When you first started doing this, what was your expectation as to how often you would be asked to just put down the price he was telling you?

A. When we had this conversation, we were referring to this particular time. I thought it would be only for that time.

Q. Did you think that it was going to be repetitive, that it

Q. Do you know one way or the other whether these prices were correct?

A. No.

Q. Then he says "more like something, something like 1300 to 1500." Do you see that?

A. Yes.

Q. Did you engage in any sort of discussion with Mr. Balboa about these prices?

A. No, I didn't.

Q. Then you say, and it looks like 160, "Wow, I guess it is really low? Laughs." What do you mean by that?

A. Yes.

Q. What did you mean by that?

A. Well, if you look at the conversation, he said something like 1300 to 1500, my reply is like a reply showing disbelief. I said 1700 and I mark hesitation which is hesitation, disbelief to 1500 and he said yes. And I guess, my reaction to this disbelief was kind of contrary, like sarcastic instead of saying, you see we are inflating three times. Instead of saying it is really high, I take more by saying irony, the contrary, and I say it is very low, and I have this stupid laugh.

Q. And why did you have that stupid laugh?

A. I don't know. Also, it is marking my disbelief.

Q. What did you do with the information on the Nigerian

Q. What was the price?
A. Reply was 210, 220.
Q. How did you react after receiving that information from Mr. Bartlett?
A. Well, I was a bit in shock.
Q. And why were you a bit in shock?
A. Well, suddenly I realize -- the reason why I contacted him was to try to find out by how inflated the price directed by him could be. And I admit that I didn't expect that it would be that inflated, so nearly 10 times, since the prices sent by Exotix, 210, 220 is far worse -- I mean, the price I sent to GlobeOp, 1300 to 1500, it is far worse than where the market I am finding where the market is, which is 210 to 220.
Q. Did you contact anyone else after you got this back from Mr. Bartlett?

Let me rephrase.

Did you contact Mr. Balboa after you got this?

A. Yes, I did.
Q. Showing you what is in the binder marked for identification as Government Exhibits 873, 874.0, 875 and 876 for identification, do you recognize those documents?
A. Yes.
Q. How do you recognize them?
A. Those exchange of emails between myself and Mr. Balboa.
Q. Are they fair and accurate copies?

above 500 and I believe it would be December of 2007 or January of 2008.

Q. At this point now we are in May 2008, did you have any more doubts?

A. No. I had a conviction.

Q. What was that conviction?

A. It was that the price was highly inflated.

Q. Did you share your concerns with GlobeOp?

A. No, I didn't.

Q. Did you try to correct the information you had previously given to them?

A. No.

Q. Why not?

A. Again, suddenly, I am really finding out that you know the process and improper conduct started in 2007 of putting a price without any real knowledge of where it was and putting a price directed to me by Mr. Balboa, so the process was improper. But suddenly I am finding out that not only is the process improper but the price is inflated which means that the price is manipulated, which means that the valuation is wrong.

And that's -- you know that's something that I am finding out later, you know from the beginning of this process. And, again, I took the wrong decision which instead of, you know doing the right thing would have been to tell him that, no, the price is wrong, I won't do it again and we put the

right price and maybe lose the client, I chose not to do it and I chose, I took the wrong decision I'm choosing to go on with the process.

Q. Cause you wanted to make sure to keep good business relations?

A. Exactly. He was a good client and I wanted to see him got get some good trades.

Q. Just to clarify on what you said then, sir, prior to this point you know what you were doing was wrong, the process, but you are now saying, indeed, now you have a conviction that the price that you're providing is even wrong?

MR. TACOPINA: Objection to the leading and summary.

THE COURT: Sustained.

Q. You testified that you weren't paid by Mr. Balboa for providing mark to market services, right?

A. Correct.

Q. But did you make money from doing business with Millennium as the client?

A. Yes.

Q. And how did that happen?

A. Well, usually, there's like for any other clients, clients would come and have an interest in buying or selling bonds and would use me as a broker to do that and which would create a commission into the thread itself. So that's how BCP and myself are getting paid through the trade.

A. Correct. So when we were in the reception area of his office, when I first give the invitation and then we started to have a conversation, he started a conversation regarding Millennium and regarding the mark-to-market process.

Q. Do you recall what he said?

A. Well, I recall him saying that I should expect to be sometime contacted either by someone from either his previous company Millennium or someone from the liquidator of the fund to answer a question about specific marks I was giving to valuation company and he mentioned the two assets, Nigerian warrant and Uruguay warrant.

Q. Did Mr. Balboa say why you might be getting a phone call?

A. Yes. So that's what he said, when he said that I would be contacted by one of those two.

During the conversation, since he knew that I was not knowledgeable of those two assets and how to explain exactly how it worked, he did propose to give me access to two documents which he had. So I don't remember if he showed the documents during that meeting or he only mentioned them, but he proposed to give me access to those documents so that they would help me to answer question in case I am contacted.

Q. Did he propose to give you access to those documents?

A. Yes.

Q. And how was he going to do that?

A. Well, he asked me if I had any personal email address

saying that it would be better to send them to a personal email. And since I didn't have one, I don't know if it came from me or from him, but the personal email address from my wife was mentioned. And I don't know if I gave him and he wrote it or he just remember it, but I gave the email address of my wife, private email address of my wife so that he could send by email those documents.

Q. Did he say why he couldn't send it to your work email?

A. He said something, it is safer to send them from personal email to personal email.

Q. What was the email address that you gave to Mr. Balboa to send these two documents that would help you explain?

A. I gave him my wife's email address.

Q. We will come back to these documents in a little bit, but what was the purpose of the trip? Did you go to the ball, the Emerging Markets Ball?

A. Yes.

Q. Did you see Mr. Balboa there?

A. No.

Q. Did you see his assistants?

A. Yes.

Q. You also mentioned a second ago that there was a second meeting a lunch meeting?

A. Yes.

Q. Where was this?

MR. MILLER: Your Honor, the government moves 1701, 1702 and 1703 into evidence.

THE COURT: Government Exhibits 1701, 1702, 1703 received in evidence.

(Government Exhibits 1701, 1702, 1703 received in evidence)

MR. MILLER: If we could publish Government Exhibit 1701 with your Honor's permission?

THE COURT: Yes.

Q. Looking at the top, who is this email being sent from?

A. It is being sent by Mr. Balboa from his private email address to my wife's private email address.

Q. And what language is that on the left-hand side?

A. This is Spanish.

Q. And what is the date on the email?

A. Well, Lunes, 4 D Octubre -- that would be Monday, 4th of October.

Q. What does it say after that?

A. Sorry?

Q. Next to the FYI?

A. "If this is not clear, I will send as Word doc."

Q. Right under it says what?

A. "Nigerian Oil Warrants."

MR. MILLER: If we could zoom out a little bit.

Q. And there is a lot of text on this page.

A. Yes.

Q. Do you recognize it?

A. Yes.

Q. How do you recognize it?

A. These are a chain of emails that I just mentioned after the phone call between Mr. Astley and myself.

MR. MILLER: I move 1706 into evidence, your Honor.

MR. TACOPINA: No objection.

THE COURT: 1706 in received evidence.

(Government Exhibit 1706 received in evidence)

MR. MILLER: If we could put up the first page.

Q. There are actually several emails in this exhibit, correct?

A. Yes. The first one will be actually the last one sent in terms of date.

Q. Again, during your conversations here, you just kept lying, correct?

A. Yes.

Q. Why?

A. Well, I mean, we are in 2010 and Mr. Balboa is no longer the client so the real reason I kept lying and kept the wrong path was just because I was scared of being -- I was scared of, you know, being exposed and my wrongdoing could be exposed and I was scared of losing my job and more.

(Continued on next page)

said. Asking him with he said.

THE COURT: No. I understand.

MR. TACOPINA: OK.

Q. Was the theory of the excess collateral account being due to warrant holders shared with you by anyone other than the defendant and that Bloomberg thing you looked at?

MR. MILLER: Objection; calls for hearsay, your Honor.

THE COURT: Sustained.

Q. You considered Mr. Balboa a specialist on Nigerian warrant, right, Mr. De Charsonville?

A. Yes, I assumed he was.

Q. At some point you as you say now in 2013 you started to doubt that the prices you were getting for Mr. Balboa regarding the warrants that you were turning over to GlobeOp, you started to doubt them, right?

THE COURT: What year?

Q. Well, back in some point in 2008 your current testimony in 2013 is that back in 2008 at some point you started to doubt the prices, right?

A. Yes.

Q. And you didn't say anything to him about those doubts to Mr. Balboa, that is back in 2008, right?

A. No.

Q. One of the reasons you say you didn't say anything to him was because you displayed cowardice, right; did you say that?

A. Yes, I said that.
Q. Because you lacked courage; is that what you said?
A. Yes, I said that.
Q. When you first started pricing the Nigerian warrants for Mr. Balboa you were looking for the price separate from what Mr. Balboa told you, right?
A. Can you repeat the question?
Q. Sure. When you first started pricing the Nigerian warrant for Mr. Balboa you were looking for the price separate from what Michael Balboa told you, correct?
A. I was looking -- I don't understand the question. Sorry. I was looking at price separate?
Q. When he first started giving you prices on Nigerian warrants?
A. In January 2007?
Q. You were looking to confirm those prices elsewhere, right?
A. Yes, I was looking. I must have looked at the Bloomberg.
Q. And then in 2008 when you could no longer find the prices on Bloomberg or anywhere else. I think you said the last time was April 2007 that they appeared on Bloomberg. In 2008 you may have even tried to contact a local broker in order to obtain a quote for the Nigerian warrant, right?
A. No.
Q. Well, did you say you were looking for an independent quote at some point in 2008 aside from Mr. Bartlett?

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **MICHAEL R. BALBOA and GILLES T. DE CHARSONVILLE,** **Defendants.**	**No. 11 Civ. 8731 (PAC)** **ECF Case**

DECLARATION OF GILLES T. DE CHARSONVILLE

I, Gilles T. De Charsonville, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct:

1. In 2013 I earned approximately €81,000 before taxes, and in 2014 I earned approximately €59,000 before taxes, compared to approximately $1,180,000 in 2010.
2. Other than in connection with the conduct at issue in this action, I have never been charged with a securities violation, and not a single complaint has been lodged against me.

Executed on January 23, 2015

Gilles T. De Charsonville