

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Hon.
	:	
	:	Criminal No. 15-
v.	:	
	:	18 U.S.C. § 371
	:	15 U.S.C. §§ 78j(b) & 78ff
	:	17 C.F.R. § 240.10b-5
	:	15 U.S.C. §§ 80b-6 & 80b-17
DONALD S. TOOMER	:	18 U.S.C. § 2

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey, sitting at Newark,
charges:

Relevant Individuals and Entities

1. At all times relevant to this Indictment:
 - a. Defendant DONALD S. TOOMER was a resident of Henderson, Nevada, and provided investment advisory services to clients in the United States, including in New Jersey, through an investment advisory firm in or around Las Vegas, Nevada ("Investment Firm A").
 - b. Co-conspirator #1 ("CC#1"), who is named as a co-conspirator but not as a defendant herein, was a resident of Las Vegas, Nevada and Hermosa Beach, California, and was engaged in the promotion of "penny" or "micro-cap" stocks – the stocks of publicly traded companies with low share prices that often traded on quotation services and marketplaces operated by OTC Markets Group Inc., such as the OTC Bulletin Board ("OTCBB"), OTC QB, OTC Pink, or Pink Sheets.

c. Co-conspirator #2 ("CC#2"), who is named as a co-conspirator but not as a defendant herein, was a resident of Holmdel, New Jersey and was also a penny stock promoter.

d. Co-conspirator #3 ("CC#3"), who is named as a co-conspirator but not as a defendant herein, was a resident of Hermosa Beach, California, and a registered representative at a broker-dealer in or around Los Angeles, California ("Broker-Dealer A").

e. NXT Nutritionals Holdings, Inc. ("NXTH") was a Delaware corporation with its principal place of business in Holyoke, Massachusetts. NXTH's common stock was quoted on the OTCBB. NXTH described itself as a food and beverage development company engaged in the development of healthy alternative sweeteners.

f. Clear-Lite Holdings, Inc. ("CLRH") was a Nevada corporation with its principal place of business in Boca Raton, Florida. CLRH's common stock was quoted on the OTCBB. CLRH described itself as a company engaged in manufacturing environmentally friendly lighting products.

g. Mesa Energy Holdings, Inc. ("MSEH") was a Delaware corporation with its principal place of business in Dallas, Texas. MSEH's common stock was quoted on the OTCBB. MSEH described itself as an exploration stage oil and gas company.

h. NXTH, MSEH and CLRH are collectively referred to herein as the "Target Companies."

The Scheme to Defraud

2. From at least as early as in or about 2008 through in or about 2011, defendant TOOMER, CC#1, CC#2, CC#3, and others engaged in a large-scale stock market manipulation scheme to “pump and dump” shares of the Target Companies’ stock. Each pump and dump generally involved three steps. First, CC#1, CC#2, and others obtained control over large blocks of the free-trading shares of the Target Companies’ stock. Second, they “pumped” the price of those shares by, among other things, engaging in manipulative and coordinated trading and disseminating promotional materials touting the stocks which encouraged others to purchase them and artificially raised the prices of the stocks. Finally, they “dumped” the stocks by selling large volumes of the Target Companies’ stock to victim-investors throughout the promotional campaigns. Following the dump phase, the Target Companies’ artificially inflated stock prices dropped, causing victim-investors to suffer losses. The scheme collectively generated over \$30 million in illicit trading profits for the co-conspirators.

3. Defendant TOOMER facilitated the scheme in exchange for his receipt of undisclosed cash kickbacks and compensation that he accepted from CC#1 and others acting at CC#1’s direction by causing his investment advisory clients, including clients residing in New Jersey, to purchase the stock of the Target Companies. Defendant TOOMER’s clients’ stock purchases were designed to: create the false impression of market interest and demand in the stock of the Target Companies; build trading volume that would be attractive to

potential investors who would later receive promotional materials about the stock; and generate income to fund the promotional campaigns that occurred in the later phases of the scheme.

4. During the time period of the scheme, CC#1 or others acting on CC#1's behalf paid defendant TOOMER in excess of hundreds of thousands of dollars in cash kickbacks, most of which came from CC#1's and CC#2's illicit trading profits and none of which were disclosed to defendant TOOMER's investment advisory clients. As such, rather than providing investment recommendations and advice based upon the best interests of his clients, as he was legally obligated to do, defendant TOOMER instead made investment recommendations based on his own personal interests and those of his co-conspirators, including CC#1 and CC#2.

5. Defendant TOOMER made various material misrepresentations and omissions to his clients to obtain their authorization to buy the Target Companies' stock in their brokerage accounts, including by falsely representing that he had done independent research regarding the Target Companies and by failing to disclose his receipt of cash payments or other compensation, or his expectation of such compensation, from his co-conspirators in exchange for recommending to his clients the Target Companies as promising investments.

6. Defendant TOOMER also concealed from Investment Firm A his receipt of cash kickbacks from his co-conspirators, and falsely represented to Investment Firm A that his clients' investments in the Target Companies were

“unsolicited,” meaning that defendant TOOMER had not affirmatively recommended the investments.

7. After convincing his clients to invest in the Target Companies based upon the above-referenced material misrepresentations and omissions, among others, defendant TOOMER, CC#1 and others coordinated the timing and price of the purchases of the Target Companies’ stock in the accounts of defendant TOOMER’s clients.

8. Defendant TOOMER and CC#1 agreed that that defendant TOOMER’s clients would not sell the stock without CC#1’s knowledge and consent, as such sales could have a negative effect on the manipulation scheme. Specifically, defendant TOOMER caused his clients to buy the stock at issue in the early phases of the pump and dump schemes while the stock prices and trading volumes were low, and during a time in which CC#1, CC#2, and their co-conspirators controlled the majority of the free-trading shares, primarily through accounts held at Broker-Dealer A and traded by CC#3. In most instances, defendant TOOMER then caused his clients to sell their stock during the promotions and while the value of the shares had been artificially inflated by the manipulative and unlawful conduct of CC#1, CC#2, and their co-conspirators.

9. Defendant TOOMER also coordinated with CC#1 to ensure that his clients’ orders to purchase the Target Companies’ stock would be matched by corresponding sell orders at the same or similar prices from accounts at

Broker-Dealer A that CC#1 or CC#2 controlled. CC#3 facilitated the prearranged trades between these accounts.

Trading in NXTH

10. In or around July 2009, defendant TOOMER in exchange for undisclosed cash kickbacks from CC#1 caused certain of his investment advisory clients to purchase hundreds of thousands of shares of NXTH stock. Defendant TOOMER represented to his clients that NXTH was an up and coming company that would likely be a promising investment. He did not disclose to his clients that he had received compensation, or expected to receive compensation, from CC#1 or other co-conspirators in exchange for recommending NXTH.

11. Prior to purchasing NXTH stock on his client's behalf, defendant TOOMER advised CC#1 that he would be buying a substantial number of shares of NXTH so that CC#1 could coordinate the trades and ensure that the transactions were executed in a manner consistent with the scheme. As such, the stock purchases by defendant TOOMER's clients closely matched sales from accounts that CC#1, CC#2, or other co-conspirators controlled.

12. For example, on or about July 16, 2009, a total of 496,000 shares of NXTH stock traded in the market. Of this amount, trading accounts at Broker-Dealer A that CC#1 or CC#2 owned or controlled collectively sold approximately 469,500 shares at \$.99 per share. Defendant TOOMER caused his clients to purchase approximately 441,000 shares at \$.99 per share – approximately 88% of the total amount of shares purchased that day.

13. Likewise, on or about August 10, 2009, defendant TOOMER caused his clients to purchase approximately 208,000 shares of NXTH stock at \$1.21 per share. On or about the same date, trading accounts that CC#1 or CC#2 controlled at Broker-Dealer A sold approximately 196,500 shares at the same price. This pattern continued at various times during the scheme and caused the false appearance of legitimate market interest and trading activity in NXTH that artificially inflated the price and volume of NXTH stock.

14. During or around the time period of these transactions, CC#1 or others acting at CC#1's direction made cash payments to defendant TOOMER to compensate him for his participation in the scheme. For example, on or about August 4, 2009, an individual acting at CC#1's direction withdrew approximately \$2,500 from a bank account in or around Las Vegas, Nevada for purposes of paying defendant TOOMER a cash kickback. On or about the same date, defendant TOOMER deposited \$2,000 in cash into a bank account that he controlled. This deposit was made through an ATM machine located in or around Henderson, Nevada. Defendant TOOMER did not disclose to his clients or Investment Firm A this or other payments and compensation that he accepted from CC#1 or others acting at CC#1's direction.

15. In or around October 2009, after defendant TOOMER, CC#1, CC#2, and CC#3 had artificially inflated NXTH's stock price and volume through, among other things, the above-referenced coordinated trades, CC#1 and CC#2 caused the dissemination of various promotional materials to further manipulate NXTH's stock. As a result, NXTH's stock price and average daily

trading volume substantially increased, with the stock trading as high as \$3.46 per share and the average daily trading volume reaching approximately 1.2 million shares. Notably, in the months leading up to October 2009, NXTH's stock price did not exceed \$2.00 and NXTH's average daily trading volume did not exceed 100,000 shares.

16. On various dates in October 2009, defendant TOOMER caused his clients to sell the majority of their NXTH shares into the open market to unsuspecting victim-investors for prices that more than doubled the prices at which defendant TOOMER acquired the shares on behalf of his clients.

Trading in CLRH

17. Shortly after making substantial trading profits in connection with NXTH, defendant TOOMER caused many of his same clients to invest in CLRH, the next in the series of manipulations that defendant TOOMER, CC#1, and CC#2 had orchestrated.

18. Specifically, on various dates in October 2009, defendant TOOMER caused his clients to collectively purchase over one million shares of CLRH stock. Defendant TOOMER, CC#1, and others coordinated many of these trades in a manner similar to that described above.

19. As with NXTH, CC#1 or others acting at CC#1's direction delivered cash payments to defendant TOOMER to compensate him for these stock purchases. And as with the NXTH-related kickbacks, defendant TOOMER did not disclose these payments to his clients or Investment Firm A. Instead, defendant TOOMER represented to his clients that CLRH was a promising

company and falsely stated that his recommendation was based upon his own independent research.

20. In or around April 2010, during the promotion of CLRH that CC#1 and CC#2 had orchestrated, defendant TOOMER caused some of his clients to sell shares of CLRH stock. Although some of these sales were profitable, defendant TOOMER's clients held many of their shares beyond the promotion and, thereafter, the stock price decreased drastically and the securities became nearly worthless. Accordingly, defendant TOOMER's clients lost hundreds of thousands of dollars investing in CLRH.

Trading in MSEH

21. In or around February 2010, defendant TOOMER caused some of his investment advisory clients to collectively purchase hundreds of thousands of shares of MSEH stock. Defendant TOOMER, CC#1, and others coordinated many of these trades in a manner similar to that described above.

22. As with NXTH and CLRH, CC#1 or others acting at CC#1's direction delivered cash payments to defendant TOOMER to compensate him for these stock purchases. Once again, defendant TOOMER did not disclose these payments to his clients or Investment Firm A.

23. On various dates in or around March and April 2010, after MSEH's stock price and trading volume had been artificially inflated by the manipulative conduct of defendant TOOMER, CC#1, CC#2, and others, defendant TOOMER caused his clients to sell their MSEH shares to

unsuspecting victim-investors at prices that more than doubled the prices at which these clients purchased the stock.

24. Notably, in or around March 2010, one of defendant TOOMER's clients indicated to defendant TOOMER a desire to sell all MSEH shares in this client's account because the price of the stock had increased substantially since the time the client purchased the stock. Contrary to his client's wishes, however, defendant TOOMER did not sell all of the client's MSEH shares because such selling would likely have had a negative impact on the scheme and the value of the shares held by defendant TOOMER's co-conspirators. Defendant TOOMER did not sell this client's remaining shares during the promotion of MSEH and, thereafter, the stock price dropped and the shares became nearly worthless.

Paying Clients Cash to Make Up for Trading Losses

25. As described above, defendant Toomer's clients profited from their investments in two of the Target Companies by selling their stock during the "pump" phase of the manipulations, and while the stock prices were artificially inflated. However, their investments in CLRH were not profitable, as discussed in paragraph 20 above.

26. To make up for some of these losses and others, defendant TOOMER arranged for CC#1 to give him tens of thousands of dollars in cash to repay certain of his clients who had sustained losses in their accounts. Defendant TOOMER then delivered the cash to these clients. Defendant

TOOMER did not disclose to Investment Firm A his transfer of cash to his clients to make up for losses in their accounts.

27. For example, although the client referenced in paragraph 24 above profited on the MSEH deal, the client had lost a substantial amount investing in CLRH. Between in or about November 2012 and in or about December 2012, defendant TOOMER gave this client approximately \$42,000 in cash to cover the client's losses in the CLRH deal.

COUNT ONE
**(Conspiracy to Commit Securities Fraud and
Investment Adviser Fraud)**

28. The allegations contained in paragraphs 1 through 27 of this Indictment are repeated and realleged as if fully set forth herein.

29. From at least as early as in or about 2008 through in or about 2012, in Hudson and Monmouth Counties, in the District of New Jersey, and elsewhere, defendant

DONALD S. TOOMER

knowingly and willfully conspired and agreed with others to commit offenses against the United States, to wit: securities fraud, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5; and investment adviser fraud, contrary to Title 15, United States Code, Sections 80b-6 and 80b-17.

Objects of the Conspiracy

30. It was a part and object of the conspiracy that defendant TOOMER and others, directly and indirectly, by the use of means and instrumentalities

of interstate commerce, and of the mails, and of facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

31. It was also a part and object of the conspiracy that defendant TOOMER and others, knowingly and willfully used the mails and other means and instrumentalities of interstate commerce, directly and indirectly, to: (a) employ a device, scheme, and artifice to defraud clients and prospective clients; (b) engage in a transaction, practice, and course of business which operated as a fraud or deceit upon clients and prospective clients; and (c) engage in an act, practice, and course of business which was fraudulent, deceptive, and manipulative, contrary to Title 15, United States Code, Sections 80b-6 and 80b-17.

Manner and Means of the Conspiracy

32. It was part of the conspiracy that CC#1 paid defendant TOOMER cash kickbacks using illicit trading profits to induce defendant TOOMER to

cause his investment advisory clients to purchase the stock of the Target Companies for the purpose of, among other things, artificially inflating the price and volume of the Target Companies' stock.

33. It was further part of the conspiracy that defendant TOOMER made various material misrepresentations and omissions to his clients to obtain their authorization to purchase the Target Companies' stock in their brokerage accounts, including by failing to disclose his receipt of cash payments or other compensation, or his expectation of such compensation, from CC#1 in exchange for recommending the Target Companies as promising investments.

34. It was further part of the conspiracy that defendant TOOMER made material misrepresentations and omissions to Investment Firm A including by failing to disclose his receipt of cash payments or other compensation, or his expectation of such compensation, from CC#1 in exchange for recommending the Target Companies to his clients, and by falsely representing that his clients' investments in the Target Companies were unsolicited.

35. It was further part of the conspiracy that CC#1 and defendant TOOMER coordinated the timing and price of his clients' trades to ensure that their orders to purchase the Target Companies' stocks matched CC#1's, CC#2's or their co-conspirators' orders to sell the Target Companies' stocks.

36. It was further part of the conspiracy that CC#1 gave defendant TOOMER tens of thousands of dollars in additional cash payments to

compensate certain of his clients for losses that they had suffered in the CLRH deal because defendant TOOMER did not permit them to sell their CLRH stock during the period in the promotion that the stock price was artificially inflated. Defendant TOOMER, in turn, delivered the cash he had received from CC#1 to his clients, frequently in envelopes.

37. It was further part of the conspiracy that defendant TOOMER made the cash payments to his clients described above, in part, to prevent the clients from complaining to others, including individuals at Investment Firm A, about investment losses they incurred in connection with the Target Companies which complaints may have exposed the co-conspirators' unlawful activity.

Overt Acts

38. In furtherance of the conspiracy and to effect the unlawful objects thereof, the following overt acts, among others, were committed in the District of New Jersey and elsewhere:

a. On or about July 16, 2009, defendant TOOMER caused several investment advisory clients to collectively purchase hundreds of thousands of shares of NXTH stock.

b. On or about August 4, 2009, an individual acting at CC#1's direction paid defendant TOOMER a cash kickback in or around Henderson, Nevada.

c. On or about February 12, 2010, defendant TOOMER caused several of his investment advisory clients to collectively purchase approximately 100,000 shares of MSEH stock.

d. On or about April 21, 2010, defendant TOOMER caused several of his investment advisory clients to collectively sell approximately 50,000 shares of CLRH stock.

e. Between in or about November 2012 and in or about December 2012, defendant TOOMER delivered approximately \$42,000 in cash to one of his investment advisory clients in or around Henderson, Nevada.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO AND THREE
(Securities Fraud)

1. The allegations set forth in paragraphs 1 through 27, and paragraphs 30 through 37, of Count One of this Indictment are repeated and realleged as if fully set forth herein.

2. On or about the dates set forth below, in Hudson and Monmouth Counties, in the District of New Jersey, and elsewhere, defendant

DONALD S. TOOMER

by use of the means and instrumentalities of interstate commerce, the mails, and facilities of national securities exchanges, directly and indirectly, did knowingly and willfully use manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 in connection with the purchase and sales of securities by:

(a) employing devices, schemes, and artifices to defraud members of the investing public; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit upon persons, in that he participated in a scheme to defraud the investing public by engaging in securities transactions for the purpose of artificially inflating and manipulating the price and value of the securities, and for the purpose of receiving undisclosed remuneration in

the form of cash kickbacks and other compensation, each stock manipulation constituting a separate count of this Indictment:

COUNT	APPROX. DATES	SECURITIES TRANSACTIONS
2	October 2009 - April 2010	Trading in the stock of Clear-Lite Holdings, Inc. (CLRH) through defendant TOOMER's investment advisory clients' accounts at Investment Firm A.
3	February 2010 - April 2010	Trading in the stock of Mesa Energy Holdings, Inc. (MSEH) through defendant TOOMER's investment advisory clients' accounts at Investment Firm A.

In violation of Title 15, United States Code, Section 78j(b) and Section 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS FOUR AND FIVE
(Investment Adviser Fraud)

1. The allegations set forth in paragraphs 1 through 27, and paragraphs 30 through 37, of Count One of this Indictment are repeated and realleged as if fully set forth herein.

2. On or about the dates set forth below, in Hudson and Monmouth Counties, in the District of New Jersey, and elsewhere, the defendant

DONALD S. TOOMER

knowingly and willfully used the mails and other means and instrumentalities of interstate commerce, directly and indirectly, to: (a) employ a device, scheme, and artifice to defraud clients and prospective clients; (b) engage in a transaction, practice, and course of business which operated as a fraud or deceit upon clients and prospective clients; and (c) engage in an act, practice, and course of business which was fraudulent, deceptive, and manipulative, in that defendant TOOMER, an investment adviser, accepted undisclosed cash kickbacks and other compensation from CC#1 and others acting at CC#1's direction in exchange for causing his investment advisory clients to establish positions in certain Target Companies during promotional campaigns, the undisclosed cash kickbacks associated with each such promotional campaign constituting a separate count of this Indictment:

COUNT	APPROX. DATES	UNDISCLOSED CASH KICKBACKS
4	October 2009 - April 2010	Defendant TOOMER's receipt of undisclosed cash kickbacks for trading in the stock of Clear-Lite Holdings, Inc. (CLRH) through his investment advisory clients' accounts at Investment Firm A.
5	February 2010 - April 2010	Defendant TOOMER's receipt of undisclosed cash kickbacks for trading in the stock of Mesa Energy Holdings, Inc. (MSEH) through his investment advisory clients' accounts at Investment Firm A.

In violation of Title 15, United States Code, Section 80b-6 and Section 80b-17; and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATIONS

1. As the result of committing the offenses constituting specified unlawful activity as defined in 18 U.S.C. § 1956(c)(7), as alleged in Counts One through Three, inclusive, of this Indictment, defendant DONALD S. TOOMER shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the said conspiracy and securities fraud offenses, and all property traceable thereto.

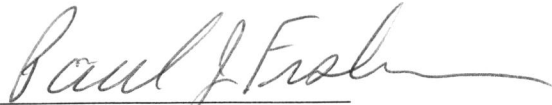
2. If by any act or omission of the defendant, any of the property subject to forfeiture described above:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

It is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.

A TRUE BILL

FOREPERSON

A handwritten signature in cursive script, reading "Paul J. Fishman", with a horizontal line underneath.

PAUL J. FISHMAN
United States Attorney

CASE NUMBER: _____

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

DONALD S. TOOMER

INDICTMENT FOR

18 U.S.C. § 371, 15 U.S.C. §§ 78J(b) and 78ff,
and 17 C.F.R. § 240.10b-5, and 15 U.S.C. §§ 80b-6 and 80b-17

A True Bill,

Foreperson

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