

the contours of that term beyond a defendant’s net profits—a limit established by longstanding principles of equity.

III

Applying the principles discussed above to the facts of this case, petitioners briefly argue that their disgorgement award is unlawful because it crosses the bounds of traditional equity practice in three ways: It fails to return funds to victims, it imposes joint-and-several liability, and it declines to deduct business expenses from the award. Because the parties focused on the broad question whether any form of disgorgement may be ordered and did not fully brief these narrower questions, we do not decide them here. We nevertheless discuss principles that may guide the lower courts’ assessment of these arguments on remand.

A

Section 78u(d)(5) restricts equitable relief to that which “may be appropriate or necessary for the benefit of investors.” The SEC, however, does not always return the entirety of disgorgement proceeds to investors, instead depositing a portion of its collections in a fund in the Treasury.... Congress established that fund in the Dodd-Frank Wall Street Reform and Consumer Protection Act for disgorgement awards that are not deposited in “disgorgement fund[s]” or otherwise “distributed to victims.”... The statute provides that these sums may be used to pay whistleblowers reporting securities fraud and to fund the activities of the Inspector General. Here, the SEC has not returned the bulk of funds to victims, largely, it contends, because the Government has been unable to collect them.⁵

The statute provides limited guidance as to whether the practice of depositing a defendant’s gains with the Treasury satisfies the statute’s command that any remedy be

⁵ According to the Government, petitioners “transferred the bulk of their misappropriated funds to China, defied the district court’s order to repatriate those funds, and fled the United States.” Brief for Respondent 36.

