

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 5647/March 14, 2018

ADMINISTRATIVE PROCEEDING  
File No. 3-15255

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In the Matter of	:	
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JOHN THOMAS CAPITAL MANAGEMENT	:	ORDER
GROUP LLC, d/b/a PATRIOT28 LLC,	:	
GEORGE R. JARKESY, JR.,	:	
JOHN THOMAS FINANCIAL, INC., and	:	
ANASTASIOS "TOMMY" BELESIS	:	

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The Securities and Exchange Commission instituted this proceeding on March 22, 2013, pursuant to Section 8A of the Securities Act of 1933, Sections 15(b)(4), 15(b)(6), and 21C of the Securities Exchange Act of 1934, Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940. On October 17, 2014, an Initial Decision (ID) concluded that George R. Jarkesy, Jr., and John Thomas Capital Management Group LLC, d/b/a Patriot28 LLC (JTCM) (collectively, JTCM/Jarkesy or Respondents) violated the antifraud provisions of the federal securities laws and imposed various sanctions.<sup>1</sup> *John Thomas Capital Mgmt. Grp.*, Initial Decision Release No. 693, 2014 SEC LEXIS 4162 (A.L.J.) (cross-petitions for review pending).

As found in the ID, JTCM, based in Houston, Texas, was an unregistered investment adviser and general partner of two hedge funds, then known as the John Thomas Bridge and Opportunity Fund LP I (Fund I) and John Thomas Bridge and Opportunity Fund LP II (Fund II) (collectively, the Funds).<sup>2</sup> Jarkesy controlled all operations and activities of JTCM as its manager. He created JTCM in 2007 to serve as the adviser to Fund I. *John Thomas Capital Mgmt. Grp.*, 2014 SEC LEXIS 4162, at \*21. The Funds invested in three asset classes: bridge loans to start-up companies; equity investments, principally in microcap companies; and life settlement policies. *Id.* at \*22. The Funds' assets under management peaked at approximately \$30 million at the end of 2011, and together, they had approximately 120 investors. *Id.* at \*22. This proceeding concerns allegations that JTCM/Jarkesy engaged in various material misrepresentations and omissions, including concerning former (settled) Respondents John Thomas Financial, Inc. (JTF), the Funds' placement agent, and JTF's owner, Anastasios "Tommy" Belesis (collectively, JTF/Belesis).

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<sup>1</sup> The proceeding has ended as to Respondents John Thomas Financial, Inc., and Anastasios "Tommy" Belesis, who settled the charges against them. *John Thomas Capital Mgmt. Grp.*, Securities Exchange Act Release No. 70989, 2013 SEC LEXIS 3862 (Dec. 5, 2013).

<sup>2</sup> The Funds have been known as the Patriot Bridge and Opportunity Fund LP I and LP II since September 2011.

The ID concluded that JTCM and Jarkey willfully: (1) violated Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5, and Advisers Act Sections 206(1), 206(2), and 206(4) and Rule 206(4)-8; and (2) aided and abetted and caused violations by the Funds of Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5. *Id.* at \*69-86. The violations occurred through material misstatements and omissions including as to diversification of investments, funds set aside to pay insurance premiums, the true relationship between JTCM/Jarkey and JTF/Belesis, and valuation of Fund assets. *Id.* at \*81-85.

The ID ordered these sanctions: (1) a cease-and-desist order against JTCM and Jarkey; (2) disgorgement by JTCM and Jarkey, jointly and severally, of \$1,278,597 (the fees they received from the Funds) plus prejudgment interest; (3) a third-tier civil penalty of \$450,000 imposed jointly and severally on JTCM and Jarkey; and (4) industry and officer-and-director bars against Jarkey. *Id.* at \*86-105.

The undersigned has reexamined the record as ordered by the Commission's November 30, 2017, order concerning administrative proceedings. *Pending Admin. Proc.*, Securities Act Release No. 10440, 2017 SEC LEXIS 3724 (Remand Order). As the parties were previously notified, the Remand Order ratified the appointment of the undersigned as an Administrative Law Judge and directed her to "[r]econsider the record, including all substantive and procedural actions taken by an administrative law judge" and "[d]etermine . . . whether to ratify or revise . . . all prior actions" in proceedings, such as this one, pending before the Commission in which she has issued an initial decision. *Id.* at \*3; see *John Thomas Capital Mgmt. Grp.*, Admin. Proc. Rulings Release No. 5404, 2017 SEC LEXIS 4147 (A.L.J. Dec. 19, 2017). As required by the Remand Order, the parties were invited to "submit any new evidence [they deem] relevant to the [undersigned's] reexamination of the record" by January 8, 2018. *John Thomas Capital Mgmt. Grp.*, Admin. Proc. Rulings Release No. 5437, 2018 SEC LEXIS 41 (A.L.J. Jan. 9, 2018). The Division of Enforcement filed a letter generally urging ratification on January 5, 2018; Respondents made a submission on January 8, 2018; and the Division replied to Respondents' submission on January 19, 2018.

The submissions contained some "new evidence" and also addressed a number of legal issues. The undersigned has reconsidered the record and determined to ratify "all prior actions" except for issues specifically addressed in this order.<sup>3</sup>

#### *Remand Order*

Respondents argue that the Remand Order is void on its face and does not cure any legal defects in this proceeding, in particular the alleged violation of Article II, Section 2, Clause 2 of the United States Constitution (Appointments Clause).<sup>4</sup> "Remanding the proceeding to an ALJ who has no constitutional authority to preside over the proceeding is a nullity, a waste of time, and a continuing violation of the Appointments Clause and Respondents' due process rights to a

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<sup>3</sup> Previously, the Chief Administrative Law Judge ratified her designation of the undersigned as the presiding administrative law judge in this proceeding. *John Thomas Capital Mgmt. Grp.*, Admin. Proc. No. 15255 (C.A.L.J. Mar. 25, 2013) (unpublished); *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5247, 2017 SEC LEXIS 3780 (C.A.L.J. Dec. 4, 2017).

<sup>4</sup> Respondents also complain that the Commission has yet to rule on its June 30, 2015, motion to the Commission asserting, *inter alia*, that the undersigned was hired in violation of the Appointments Clause and that proceedings conducted by her are therefore void. Respondents reason that, in addition to being void, the Remand Order is premature in light of the pending motion. Respondents urge that the Commission rule on the motion and dismiss the proceeding. As the motion is before the Commission, the undersigned cannot rule on it.

timely adjudication.” Resp. Br. at 4. The undersigned, however, is bound to follow the Commission’s order. She understands that Respondents make this argument to preserve it for appeal.

### *Due Process and Equal Protection*

Respondents continue to challenge this proceeding on numerous constitutional grounds and procedural defects and reiterate a number of arguments that were addressed in the ID, which concluded that Respondents had not established valid claims of due process and equal protection violations to prevent the determination of the proceeding against them. *John Thomas Capital Mgmt. Grp.*, 2014 SEC LEXIS 4162, at \*4-18. This conclusion is specifically ratified.

### *Penalty*

As noted above, the ID ordered a third-tier civil penalty of \$450,000 imposed jointly and severally on JTCM and Jarkesy, as authorized by Sections 8A of the Securities Act, 21B of the Exchange Act, 203(i) of the Advisers Act, and 9(d) of the Investment Company Act. *Id.* at \*93-97. The applicable maximum third-tier penalty for each violative act or omission was \$150,000; in calculating the \$450,000 penalty, the ID considered the violations as three courses of action – the violations arising from the material misrepresentations and omissions relating to (1) the life settlement component of the Funds’ investments; (2) the corporate investment component of the Funds’ investments; and (3) Respondents’ relationship with JTF/Belesis – resulting in three units of violation.<sup>5</sup> *Id.* at \*93-97.

Reasoning from the holding of *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), that disgorgement is a penalty subject to the five-year statute of limitations set forth in 28 U.S.C. § 2462, Respondents argue that disgorgement in addition to the \$450,000 penalty breaches the maximum authorized third-tier penalty. However, as the Division notes, the securities statutes authorize disgorgement *in addition to* penalties.<sup>6</sup> See 15 U.S.C. § 78u-2(e) (“In any proceeding in which the Commission . . . may impose a penalty under this section, the Commission . . . may enter an order requiring accounting and disgorgement.”); 15 U.S.C. §§ 80a-9(e), 80b-3(j) (similar).

### *Disgorgement*

Finally, Respondents argue that any disgorgement must be reduced by amounts paid to investors in related private litigation, citing a February 3, 2017, judgment in *Rodney v. John Thomas Capital Management Group LLC*, No. 2013-54408 (Tex. Dist. Ct.), approving a settlement in which JTCM/Jarkesy were to pay \$500,000; MFR, the Funds’ former accountant was to pay \$1,250,000; and JTF/Belesis were to pay \$300,000. Therefore, they argue, any disgorgement should be reduced by \$2,050,000. Respondents are invited to submit more evidence and argument concerning this by April 13, 2018. In particular, it is not clear why Respondents should be credited with any payments made by MFR or JTF/Belesis. See *Ralph Calabro*, Securities Act Release No. 9798, 2015 WL 3439152, at \*44 & n.226 (May 29, 2015) (settlement to which respondent “made no monetary contribution” did not provide basis for

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<sup>5</sup> The ID noted that the securities statutes, like most civil penalty statutes, leave the precise unit of violation undefined. *John Thomas Capital Mgmt. Grp.*, 2014 SEC LEXIS 4162, at \*96; see Colin S. Diver, *The Assessment and Mitigation of Civil Money Penalties by Federal Administrative Agencies*, 79 Colum. L. Rev. 1435, 1440-41 (1979).

<sup>6</sup> The Division also argues that, instead of calculating the penalty on three courses of action, it could have been based on a different unit of violation, such as the number of investors harmed. However, the undersigned concluded that three units of violation was appropriate.

offset); *Timbervest, LLC*, Advisers Act Release No. 4443, 2016 WL 3595460, at \*1 n.6 (July 5, 2016) (noting that “whether respondents themselves paid the settlement amount” was relevant consideration to offset determination), *on limited remand*, No. 15-1416 (D.C. Cir. June 24, 2016). Also, more detail should be furnished concerning the basis of the lawsuit leading to the settlement and “the extent to which the settlement amount is attributable to the misconduct underlying the [undersigned’s] disgorgement order”<sup>7</sup> and whether settlement payments have been made.

IT IS SO ORDERED.

/S/ Carol Fox Foelak  
Carol Fox Foelak  
Administrative Law Judge

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<sup>7</sup> *Timbervest*, 2016 WL 3595460, at \*1 n.6.