## UNITED STATES OF AMERICA Before the SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549

ADMINISTRATIVE PROCEEDINGS RULINGS Release No. 770/July 23, 2013

ADMINISTRATIVE PROCEEDING File No. 3-15002

In the Matter of

JAY T. COMEAUX : ORDER

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Under consideration is Respondent Jay T. Comeaux's (Comeaux) Motion to Correct Manifest Error of Fact (Motion to Correct), timely filed July 12, 2013, pursuant to 17 C.F.R. § 201.111(h). The Motion to Correct relates to the July 2, 2013, Initial Decision (ID) in this matter. It will be denied because it does not identify a patent misstatement of fact in the ID.

## **BACKGROUND**

The Securities and Exchange Commission's (Commission) August 31, 2012, Order Instituting Proceedings, pursuant to Comeaux's offer of settlement, made various findings of fact and conclusions of law, imposed cease-and-desist orders and other sanctions on him, and ordered additional proceedings to determine what, if any, disgorgement and civil penalties against him are in the public interest. Following additional proceedings, the undersigned issued the ID, which ordered Comeaux to disgorge \$3,386,974.50, reduced by the value of assets under the control of the court-appointed receiver in SEC v. Stanford, No. 3-09-cv-0298-N (N.D. Tex. 2009), plus prejudgment interest and declined to order a civil penalty. Jay T. Comeaux, Initial Decision No. 494 (A.L.J. July 2, 2013). The ID concluded that Comeaux had the financial ability to pay disgorgement plus prejudgment interest.<sup>1</sup>

## MOTION TO CORRECT

The Motion to Correct has been considered in light of the limited purpose of 17 C.F.R. § 201.111(h) – to correct "a patent misstatement of fact." The Commission has stated, "[M]otions to correct manifest error are properly filed under this Rule only if they contest a patent misstatement of fact in the initial decision. Motions purporting to contest the substantive merits

<sup>&</sup>lt;sup>1</sup> Pursuant to 17 C.F.R. § 201.630(a), "The . . . hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest."

of the initial decision will be treated as a petition for review [by the Commission, pursuant to 17 C.F.R. § 201.410]." 70 Fed. Reg. 72566, 72567 (Dec. 5, 2005).

The Motion to Correct challenges the conclusion that Comeaux has the ability to pay disgorgement and prejudgment interest ordered by the ID. Rather than identify a patent misstatement of fact in the ID, the Motion to Correct makes an argument that is more properly made before the Commission in a petition for review. Accordingly, the Motion to Correct must be denied.

IT IS SO ORDERED.	
	Carol Fox Foelak
	Administrative Law Judge