

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 5630/February 26, 2018

ADMINISTRATIVE PROCEEDING  
File No. 3-16353

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In the Matter of	:	
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SPRING HILL CAPITAL MARKETS, LLC,	:	ORDER
SPRING HILL CAPITAL PARTNERS, LLC,	:	
SPRING HILL CAPITAL HOLDINGS, LLC, and	:	
KEVIN D. WHITE	:	

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The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on January 22, 2015, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940. On November 30, 2015, an Initial Decision (ID) made various findings of fact and conclusions of law and imposed various sanctions. *Spring Hill Capital Mkts., LLC*, Initial Decision Release No. 919, 2015 SEC LEXIS 4895 (A.L.J.) (cross-petitions for review pending).

As found in the ID, Kevin White founded the Spring Hill entities, with former Lehman Brother colleagues after that firm's collapse; was CEO of the Spring Hill entities; and owned 80% of Spring Hill Capital Holdings, LLC (SHCH), a holding company that was the sole direct owner of, and had full and exclusive authority to manage, Spring Hill Capital Partners, LLC (SHCP), and Spring Hill Capital Markets, LLC (SHCM) (collectively, Spring Hill). *Id.* at \*12.

The proceeding concerns two separate fact situations: (1) a history of transactions from May 2009 through February 26, 2010, while SHCM's application for registration as a broker-dealer was pending, during which SHCP acted as an unregistered broker-dealer; and (2) a series of transactions in a bond, known as the Gramercy Bond, in March 2010, during which SHCM, by then a registered broker-dealer, failed to keep an accurate blotter, to keep required minimum net capital, and to timely inform the Commission of a net capital deficiency.

The ID concluded as to (1): (a) SHCP violated Exchange Act Section 15(a)(1) by operating as an unregistered broker; (b) White aided and abetted and caused the violation; and (c) as CEO, 80% owner and founder of SHCH, and 100% owner of SHCP, White's secondary liability for SHCP's violation is attributed to SHCH as well. *Id.* at \*37-41. As to (2): (a) SHCM violated Exchange Act 17(a) and Rule 17a-3(a)(1) (incorrect date of the first Gramercy Bond transaction on its trade blotter); (b) SHCM violated Exchange Act Section 15(c)(3) and Rules 15c3-1 and 17a-11(b)(1) (net capital fell below minimum for several hours in connection with the March 16

Gramercy Bond purchase and sale transaction and SHCM did not inform the Commission); and (c) White and SHCH caused, but did not aid and abet, SHCM's violations.<sup>1</sup> *Id.* at \*41-48.

The ID imposed: (1) cease-and-desist orders against SHCP, SHCH, and White for the SHCP violations and against SHCM, SHCH, and White for the SHCM violations; (2) a second-tier civil penalty of \$75,000 for the SHCP violation imposed jointly and severally on SHCP, SHCH, and White; (3) a first-tier penalty of \$7,500 for the SHCM violations imposed jointly and severally on SHCM, SHCH, and White; (4) a censure of SHCM for violating Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-1, 17a-3(a)(1), and 17a-11(b)(1); (5) a censure of White for aiding and abetting SHCP's violation of Exchange Act Section 15(a) and Rafferty Capital Markets's violation of Exchange Act Section 17(a) and Rule 17a-3(a)(1); and (6) disgorgement by SHCP, SHCH, and White, jointly and severally, of \$3,953,608 plus prejudgment interest. *Id.* at \*48-66. The \$3,953,608 ordered to be disgorged was commissions from SHCP's operation as an unregistered broker-dealer from May 2009 through February 26, 2010. *Id.* at \*1, \*13, \*55. Neither commissions paid directly to SHCP employees by Rafferty, nor any other SHCP business expenses were omitted from the disgorgement total. *Id.* Joint and several liability against SHCH, SHCP, and White was ordered in view of the common ownership among the Spring Hill entities, White's ultimate 80% ownership and leadership, and the flow of funds among the entities. *Id.*

The undersigned has reexamined the record as ordered by the Commission's November 30, 2017, order concerning administrative proceedings. *Pending Admin. Proc.*, Securities Act of 1933 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 Spring Hill Capital Mkts., LLC*, Admin. Proc. Rulings Release No. 5400, 2017 SEC LEXIS 4140 (A.L.J. Dec. 18, 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 5, 2018. *Spring Hill Capital Mkts., LLC*, 2017 SEC LEXIS 4140. The parties made submissions on January 5, 2018, and the Division of Enforcement replied to Respondents' submission on January 19, 2018. The submissions did not contain "new evidence" but addressed legal issues related to disgorgement, in particular, the effect of *Kokesh v. SEC*, 137 S. Ct. 1635 (2017) (holding that disgorgement is a penalty subject to the five-year statute of limitations set forth in 28 U.S.C. § 2462). The submissions did not address the other sanctions or other issues unrelated to disgorgement. The undersigned has reconsidered the record and determined to ratify "all prior actions" except for issues specifically addressed in this order.<sup>2</sup>

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<sup>1</sup> White and SHCH stipulated that they aided and abetted and caused a trade blotter violation by Rafferty Capital Markets, LLC, a registered broker-dealer, in connection with the first Gramercy Bond trade. *Spring Hill Capital Mkts., LLC*, 2015 SEC LEXIS 4895, at \*15, \*51. SHCM had a piggyback arrangement with Rafferty, an introducing broker, and cleared through Rafferty's clearing broker. *Id.* at \*15-17,

<sup>2</sup> Previously, the Chief Administrative Law Judge ratified her designation of the undersigned as the presiding administrative law judge in this proceeding. *Spring Hill Capital Mkts., LLC*, Admin. Proc. Rulings Release No. 2265, 2015 SEC LEXIS 315 (C.A.L.J. Jan. 28, 2015); *Pending Admin. Proc.*, Admin. Proc. Rulings Release No. 5247, 2017 SEC LEXIS 3780 (C.A.L.J. Dec. 4, 2017).

## *Disgorgement*

In light of *Kokesh*, any disgorgement is limited to ill-gotten gains during the five-year period preceding January 22, 2015, the date when this proceeding was instituted. The disgorgement ordered by the ID was of commissions earned by SHCP from May 2009 through February 26, 2010. The Division acknowledges that disgorgement should be reduced to omit gains outside the limitations period, and Respondents argue that, at a minimum, such gains should be omitted. Citing to Division Exhibit 133A, Tab “2010,” Cells 31Z and 77Z, and subtracting the former number from the latter, the Division calculates the trading revenue earned by SHCP between January 22 and February 26, 2010, to be \$760,402.01. Respondents state that trades during that period generated approximately \$450,000 in gross revenue, citing to Division Exhibits 137, 181, and 244. The first two exhibits, however, confirm the Division’s calculation, and it is difficult to extract information from the third to replicate a calculation totaling \$450,000. The difference between the two figures is significant, and Respondents are invited to make a supplemental submission by March 23, 2018, to support the \$450,000 figure.

Respondents further argue that the \$450,000 was used for SHCP’s legitimate business expenses and thus, any possible disgorgement amount should be reduced to zero. This issue was addressed in the ID. *Spring Hill Capital Mkts., LLC*, 2015 SEC LEXIS 4895, at \*54-55. Indeed, the Supreme Court considered the fact that disgorgement is sometimes ordered without consideration of a defendant’s expenses as an indication that disgorgement is a penalty subject to 28 U.S.C. § 2462. *Kokesh*, 137 S. Ct. at 1644-45.

Respondents argue that the entire claim for disgorgement is time barred because it accrued on April 28, 2009, when Spring Hill signed a contract with Rafferty that allowed it to receive transaction based compensation. This contention was rejected in the ID on the ground that cease-and-desist orders and disgorgement are not subject to the five-year statute of limitations provided in 28 U.S.C. § 2462. Post *Kokesh*, this contention must still be rejected. Section 15(a) makes it unlawful for an unregistered broker-dealer “to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security.” Absent such transactions or attempts to induce transactions, SHCP could not have violated Section 15(a). Thus, SHCP could not have violated Section 15(a) merely by signing a contract to receive transaction-based compensation. Insofar as Respondents additionally argue that the Section 15(a) claim is time-barred on the ground that it accrued when SHCP entered its first transaction as an unregistered broker-dealer, the argument must still be rejected. SHCP’s later transactions are separate claims that accrued when they occurred, and those within the limitations period are not time-barred.

Although they focus on disgorgement, Respondents also refer to their contention, made in post-hearing briefing and in their pending petition for review, that registered representatives of Rafferty (not SHCP) introduced and executed the trades. The undersigned rejects this argument, and the ID’s conclusion that SHCP was responsible for effecting the transactions within the meaning of Section 15(a)(1) is specifically ratified. It is further noted that the ID found that – as agreed between Spring Hill and Rafferty – White, and Spring Hill employees Paul Tedeschi, Philip Bartow, John Fernando, and Patrick Quinn were associated as registered representatives with Rafferty and that, typically, Tedeschi, Quinn, and Bartow executed trades for Spring Hill during the time at issue. See *Spring Hill Capital Mkts., LLC*, 2015 SEC LEXIS 4895, at \*14-17 & nn.6, 10.

As noted above, the ID ordered disgorgement against SHCP, SHCH, and White jointly and severally. Respondents argue that White never received any of the sum he was ordered to disgorge and, thus, the disgorgement order against him should be vacated.<sup>3</sup> Joint and several liability was ordered in view of the common ownership among the Spring Hill entities, White's ultimate 80% ownership and leadership and the flow of funds among the entities. Certainly White would be relieved of any responsibility to pay disgorgement if it were paid by SHCP or SHCH, entities that he owned and controlled. Nonetheless, Respondents are invited to explain in greater detail by March 23, 2018, why White should be omitted from the joint and several liability. Their showing should explain how SHCP and SHCH will be able to pay any disgorgement, in view of the possibility that the Spring Hill entities have gone out of business. SHCP became inactive after SHCM's registration as a broker-dealer became effective<sup>4</sup> and SHCM withdrew its registration on February 25, 2016.<sup>5</sup>

IT IS SO ORDERED.

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

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<sup>3</sup> Insofar as Respondents argue that requiring White to disgorge gains that he did not receive operates as a penalty, *Kokesh* recognized such a circumstance in concluding that disgorgement is a penalty subject to 28 U.S.C. § 2462. *Kokesh*, 137 S. Ct. at 1644.

<sup>4</sup> *Spring Hill Capital Mkts., LLC*, 2015 SEC LEXIS 4895, at \*12-13.

<sup>5</sup> See SHCM's BrokerCheck Report, available at <https://brokercheck.finra.org> (last visited February 14, 2018).