

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

Administrative Proceedings Rulings
Release No. 5708 / May 1, 2018

Administrative Proceeding
File No. 3-17342

In the Matter of

**RD Legal Capital, LLC, and
Roni Dersovitz**

**Order Directing
Supplemental Briefing**

Among other remedies, the Division of Enforcement is seeking potential disgorgement of more than \$50 million, plus prejudgment interest. Disgorgement and prejudgment interest are discretionary, equitable remedies. *See* 15 U.S.C. §§ 78u-2(e) (“the Commission . . . *may* enter an order requiring accounting and disgorgement” (emphasis added)), 78u-3(e) (same); *accord SEC v. Sargent*, 329 F.3d 34, 40 (1st Cir. 2003); *SEC v. Commonw. Chem. Sec., Inc.*, 574 F.2d 90, 95 & 103 n.13 (2d Cir. 1978). However, at least one Commission decision suggests that discretion is limited in determining disgorgement. *Jay T. Comeaux*, Securities Act of 1933 Release No. 9633, 2014 WL 4160054, at *3, *5 (Aug. 21, 2014). In *Comeaux*, the Commission “reject[ed] [the] contention that, in determining disgorgement, [it] should apply the public interest factors set forth in *Steadman v. SEC*” and the securities statutes. *Id.* at *5. But *Comeaux* was a remand order, not a final agency action. Also, *Comeaux* relied in part on the notion that disgorgement, unlike a bar or civil penalty, is not a “punitive sanction,” *id.*, which has been cast into doubt by *Kokesh v. SEC*, 137 S. Ct. 1635, 1643-44 (2017). Therefore, I direct the parties to address whether the above statement from *Comeaux* is binding precedent and whether any other considerations, beyond those articulated in *Comeaux*, should guide the decision whether to impose disgorgement and prejudgment interest in a Commission proceeding, particularly in this proceeding, in which disgorgement could be ordered for an offense lacking a scienter requirement.

In addition, the parties should brief the proportionality of the amount of disgorgement requested. *See SEC v. Metter*, 706 F. App'x 699, 703-04 (2d Cir. 2017) (discussing \$52 million disgorgement).¹

The parties shall file simultaneous opening briefs on May 18, 2018, and simultaneous replies on May 30.

Jason S. Patil
Administrative Law Judge

¹ Finally, the parties could address whether any taxes Respondents paid on profits may be offset from disgorgement in light of *Kokesh's* ruling that disgorgement is a penalty. *See Kokesh*, 137 S. Ct. at 1643-44; *Curtis A. Peterson*, Initial Decision Release No. 1124, 2017 WL 1397544, at *5-7 (ALJ Apr. 19, 2017).