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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of **JAY T. COMEAUX,** **Respondent.**	**ADMINISTRATIVE PROCEEDING** **File No. 3-15002**

DIVISION'S MOTION FOR SUMMARY DISPOSITION
AS TO MONETARY RELIEF

I.
PROCEDURAL BACKGROUND

On August 31, 2012, the Commission issued an Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) and of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist order, and Notice of Hearing ("OIP") against Respondent Jay T. Comeaux.

As a result of an Offer of Settlement, the OIP ordered that: Respondent Comeaux shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"). Among other relief, the OIP also: barred Respondent Comeaux from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating

organization; and prohibited Respondent Comeaux from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company.

The OIP also provided that additional proceedings would be conducted to determine what, if any, disgorgement and civil penalties against Respondent is in the public interest. In connection with those proceedings, Respondent Comeaux is precluded from arguing he did not violate the federal securities laws described in the OIP and, for purposes of these additional proceedings, the allegations of the OIP are deemed true. [See OIP at Section V.]. As set out in the OIP, the Court may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts from sworn deposition or investigative testimony, and documentary evidence. [Id.]. Accordingly, the parties subsequently agreed to resolve this remaining issue through written submissions. [*See* Prehearing Order entered October 22, 2012].

II.
STATEMENT OF FACTS[1]

A. Respondent and Related Parties

Respondent Jay T. Comeaux (CRD # 1617778) was President of Stanford Group Company ("SGC"), a Houston-based broker-dealer and investment adviser registered with the Commission, from January 1996 until March 2005. Between March 2005 and February 2009, Comeaux was Executive Director of SGC. As Executive Director, Comeaux managed SGC's Houston branch office. Comeaux was also a registered representative/advisory representative of SGC. Before joining SGC, Comeaux worked for nine years at another brokerage in Baton Rouge, LA. Comeaux

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[1] Unless otherwise noted, the facts set out in this Statement of Facts are taken from the OIP in this matter and are, therefore, deemed true for purposes of determining the monetary remedies that should be imposed against Respondent Comeaux. *See generally*, OIP at Section V.

is 64 years old and lives in Houston, Texas. During the relevant time period, Comeaux held Series 3, 7, 24, 53, 63, and 65 licenses.

SGC was a broker-dealer and investment adviser registered with the Commission. SGC was a wholly-owned subsidiary of Stanford Group Holdings, Inc., which in turn was owned and controlled by Robert Allen Stanford ("Allen Stanford").

Stanford International Bank ("SIB") was a private international bank domiciled in St. John's, Antigua and Barbuda. SIB was owned and controlled by Allen Stanford. By 2008, SIB claimed to serve as many as 30,000 clients in 130 countries and to have approximately $8 billion in assets under management. SGC's business included sales of SIB certificates of deposit (the "SIB CDs"). Throughout Comeaux's tenure with SGC, sales of SIB CDs generated more than half of SGC's total revenues. In 2007 and 2008, SGC financial advisers sold over $2 billion in SIB CDs, primarily to U.S. investors.

B. Comeaux's Relationship with Stanford and His Monetary Gains

While associated with his former firm, Comeaux managed a portfolio of funds for SIB's predecessor, Guardian International Bank.

In January 1996, Comeaux left his former firm and joined SGC as President. SGC designated Comeaux as the person responsible for "overall supervision of all financial consultants." SGC referred to its employees who handled advisory clients and brokerage customers as "financial advisers" or "financial consultants" (hereinafter the "FAs"). FAs, including Comeaux, recommended and sold SIB CDs to brokerage customers and, in other instances, recommended to advisory clients portfolio allocation products that included SIB CDs. The SIB CD purchasers were often risk-averse investors.

Between 1998 and 2009, Comeaux recommended and sold SIB CDs. As a bare minimum for purposes of these proceedings, Comeaux received commissions of at least $1.3 million on the sales of the SIB CDs. He also received bonuses and other compensation based on the revenues of the Houston branch. [See OIP at Section III(6).]

In fact, however, an analysis of compensation-related records of SGC demonstrates that Comeaux received significantly more than $1.3 million in ill-gotten gains. Between January 15, 2005 and February 13, 2009, Comeaux received at least $7,457,985.83 in payments from SGC. [See Declaration of Karyl Van Tassel ("Van Tassel Declaration"), paragraph 8, attached as Exhibit A.]

As discussed below, the Van Tassel Declaration sets out in detail the nature of various payments Comeaux received, but two facts stand out. First, Ms. Van Tassel's analysis demonstrates that SGC was insolvent from at least 2004 forward, but for the proceeds from the sale of CDs. [Van Tassel Dec. at paragraph 11]. As discussed below, as a result of the key role selling the SIB CD played in propping up SGC, all of the payments to Comeaux are related to his misconduct. Second, regardless of that, it is clear that Comeaux received compensation of at least $3,386,974.50 during that time period that was directly tied to and based only on the sale of SIB CDs by Comeaux and others at his direction at Stanford Group Company. [Id.] Indeed, this is a conservative estimate because the Receiver's forensic accountant has not yet been in a position to determine compensation received before 2005, i.e., during the period in which Respondent Comeaux served as SGC's President. [Id. at paragraph 8].

C. Misrepresentations and Omissions Regarding Liquidity of SIB's Investment Holdings

Beginning in October 1998, SGC FAs, including Comeaux, offered and sold SIB CDs to U.S. investors pursuant to a private placement exemption from registration under Regulation D of the federal securities laws. SGC and its FAs, including Comeaux, received significant revenue as a result of recommending the SIB CD to their clients. Comeaux knew that this revenue constituted a substantial portion of SGC's overall revenue during his tenure.

SGC trained its FAs, including Comeaux, to tell investors that SIB's portfolio of assets was highly marketable and liquid. However, Comeaux knew that SIB would not disclose the details of its investment holdings to him or other SGC executives or representatives. Despite knowing that SIB's investment portfolio was not transparent to SGC, SGC and Comeaux used promotional marketing material to represent to investors that SIB maintained a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multi-national companies and major international banks."

The liquidity of SIB's underlying portfolio was a material feature of SIB's and SGC's marketing of SIB CDs.

SIB's portfolio was not invested in highly marketable and liquid assets. Other than his reliance on SIB's representations, Comeaux and other SGC FAs had no basis in fact to make such a representation to investors.

D. Misrepresentations and Omissions Concerning SIB's "Comprehensive Insurance Program"

Comeaux, understood that in contrast to certificates of deposit issued by U.S. banks, the SIB CDs were not insured. SGC and Comeaux, however, marketed and sold the SIB CDs using

a brochure that discussed the SIB CD to represent to investors that SIB maintained a "comprehensive insurance program" that provided "depositor security."

SGC also used training material for SGC FAs, including Comeaux, claiming that (a) SIB maintained a comprehensive insurance program that protected investors; (b) FDIC insurance was "relatively weak" in comparison to SIB's insurance program; and (c) SIB was subject to an extensive risk management analysis conducted by an outside firm to determine whether reasonable care is routinely exercised in the protection of the bank's assets.

The alleged "comprehensive insurance program" was a material feature of SIB's and SGC's marketing of SIB CDs. And it was false. SIB did not maintain a "comprehensive insurance program" that provided depositor security, and had no insurance program that was the equivalent of — or better than — that provided by the FDIC. Further, SIB was not subject to an extensive risk management analysis by an outside firm to determine whether reasonable care is routinely exercised in the protection of the bank's assets. Comeaux knew that SIB CDs were not covered by a "comprehensive insurance program."

III.
ARGUMENT

A. Comeaux should be required to disgorge all of his ill-gotten gains, plus pre-judgment interest.

1. Disgorgement

Disgorgement is an equitable remedy intended to prevent unjust enrichment and to deter others from violating securities laws by making violations unprofitable. *See John A. Carley*, AP File No. 3-11626, 2008 SEC LEXIS 222, *104 (Jan. 31, 2008) (citations omitted); *Thomas C. Bridge*, 2009 SEC LEXIS 3367 at *93; *SEC v. Resnick*, 604 F. Supp. 2d 773, 782 (D. Md. 2009)

(*citing Marker*, 427 F. Supp. 2d at 591); *see also SEC v. First City Financial Corp.*, 890 F.2d 1215, 1230-31 (D.C. Cir. 1989); *SEC v. Bilzerian*, 814 F. Supp. 116, 120 (D.D.C. 1993). To justify a particular amount of disgorgement, the Commission must simply establish a reasonable approximation of the amount of gains causally connected to the fraud. *Thomas C. Bridge* at *93 (quotations omitted); *Resnick*, 604 F. Supp. 2d at 782; *cf. In re GMC*, 110 F.3d 1003, 1019 n. 16 (4th Cir.), *cert. denied*, 522 U.S. 814 (1997) ("where a 'harm' amount is difficult to calculate, a court is wholly justified in requiring the party in contempt to disgorge any profits it may have received that resulted in whole or in part from the contemptuous conduct"); *see also First City Financial Corp.*, 890 F.2d at 1231. All doubts concerning the approximation are to be resolved against the defendant. *SEC v. Hughes Capital*, 917 F. Supp. 1080, 1085 (D.N.J. 1996), *aff'd w/o opinion*, 1997 U.S. App. LEXIS 24480 (3d Cir. July 9, 1997); *see also First City Financial Corp.*, 890 F.2d at 1232; *SEC v. MacDonald*, 699 F.2d 47, 55 (1st Cir. 1983). Once the Commission has shown that the disgorgement amount is a reasonable approximation of ill-gotten gains, the burden of proof shifts to the defendant. *First City Financial Corp.*, 890 F.2d at 1232.

Here, a forensic accountant working for the Receiver appointed over SGC has conducted an extensive analysis of compensation and other relevant records to establish that Comeaux received $7,457,985.83 in payments from SGC from approximately January 15, 2005 and February 13, 2009. The bulk of these payments were in the form of compensation commissions resulting from selling SIB CDs, other commissions, and bonuses. [See generally Van Tassel Dec. at paragraph 9.]. Moreover, without the benefit of proceeds from the sale of SIB CCS, SGC was insolvent from 2004 forward. In other words, without the misconduct of individuals such as Comeaux in fraudulently selling the SIB CD, SGC would have been insolvent and Comeaux would have received no

payments from SGC. Given the causal connection between Comeaux's misconduct and all payments he received from SGC, he should be required to disgorge all of those payments as ill-gotten gains. *See, e.g., CFTC v. British American Commodity Options Corp.*, 788 F.2d 92 (2nd Cir), 479 US 853 (1986) (upholding order requiring CEO of a broker-dealer to disgorge entire salary because broker dealer engaged in pervasive fraud); *In the Matter of Rita J. McConville and Kevin M. Harris, C.P.A.,* 2004 SEC LEXIS 2228 (September 27, 2004), Administrative Proc. File No. 3-11330, Initial Decision Release Number 259 (ordering disgorgement of salary, finding that "the root cause of the violations was her failure to perform her responsibilities); *SEC v. Gruttadauria*, Case No. 1:02-cv-00324-PAG, slip op. at 9 (N.D. Ohio March 10, 2004) (granting summary judgment and ordering defendant to pay $20.8 million in salary, wages, and bonuses).

Even if the Court excludes portions of these payments, the evidence conclusively establishes that Comeaux received at least $3,386,974.50 in payments of compensation, commissions and bonuses that were directly based on only his fraudulent conduct in connection with marketing the SIB CDs and he should – at a minimum – be required to disgorge these fraudulent gains.[2] *See, e.g., SEC v. Penn Central Co.*, 450 F. Supp. 908, 916 (E.D. Pa. 1978) (awarding disgorgement where compensation tied to results related to fraudulent conduct).[3]

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[2] In evaluating the evidence related to the compensation and other payments Comeaux received in this matter, the Division asks that the Court take judicial notice that the Fifth Circuit Court of Appeals has noted that Van Tassel's work is clear, credible, and reliable. *See, e.g.* Janvey v. Alguire, 647 F.3d, 585 at 597 (5th Cir. 2011) ("The district court relied upon . . . the declarations of the Receiver's forensic accountant, Karyl Van Tassel, to find that a Ponzi scheme existed. We find that the district court did not err in finding that the Stanford enterprise operated as a Ponzi scheme. . . . The Van Tassel Declarations . . . provide clear, numerical support for the creative reverse engineering undertaken by Stanford executives to accomplish the Ponzi scheme;" *see also Am. Cancer Soc'y v. Cook*, 675 F.3d 524, 528 (5th Cir. 2012) (crediting Ms. Van Tassel's declaration and stating that "this court found credible [in *Alguire*] a declaration that

2. Prejudgment Interest

Rule 600 provides that prejudgment interest shall be due on any sum required to be paid pursuant to an order of disgorgement. This is particularly true here, where Comeaux was able to enjoy the fruits of his fraudulent conduct for over a decade. *See Hughes Capital*, 917 F. Supp. at 1090 ("It comports with the fundamental notions of fairness to award prejudgment interest. The defendants had the benefit of nearly $2 million dollars [sic] for the nine and one-half years between the fraud and today's disgorgement order. In order to deprive the defendants of their unjust enrichment, the court orders the defendants to disgorge . . . prejudgment interest.").

The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions such as this one. See Rule 600. Attached as Exhibit B is an affidavit setting out possible prejudgment interest sums. Although the Division believes Respondent Comeaux should be required to disgorge all the payments he received from SGC, for the Court's convenience, the Division has presented three alternatives: (1) a disgorgement amount of $7,457,985.83, based a deemed violation date of January 1, 2005, through March 28, 2013, resulting in prejudgment interest of $3,893,887.07; (2) a disgorgement amount of $3,386,974.50, based on a deemed violation date of January 1, 2005, through March 28, 2013, resulting in prejudgment interest of $1,768,372.38; and (3) a disgorgement amount of $1.3 million (the amount of ill-gotten gains Respondent is estopped

provided 'clear, numerical support for the creative reverse engineering undertaken' by the Ponzi scheme and specifically itemized the assets and returns of the company.").

[3] If anything, this amount understates Respondent Comeaux's ill-gotten gains because they do not include compensation received before 2005. There can be no doubt that Respondent Comeaux received lucrative compensation before 2005, during the almost ten years he served as

from denying) based on a deemed violation date of January 1, 2005, through March 28, 2013, resulting in prejudgment interest of $678,742.69.

The Division urges the Court to require Respondent Comeaux to disgorge all of his ill-gotten gains, plus prejudgment interest.

B. Respondent Comeaux should be required to pay a maximum third-tier civil penalty.

Under Section 21B(a)(4) of the Exchange Act and Section 20(d)(2)(C) of the Securities Act, the Commission may assess a civil penalty if a respondent has committed or caused violations of the antifraud provisions of the federal securities laws or failed reasonably to supervise another person who has willfully violated the Securities Act, the Exchange Act, or the rules and regulations thereunder. Likewise, under Section 203(i) of the Advisers Act, 15 U.S.C. § 80b-3(i) (2011), and Section 9(d) of the Investment Company Act, 15 U.S.C. § 80a-9(d) (2011) the Commission may impose a civil monetary penalty if a respondent has willfully violated, *inter alia,* the provisions of the Advisers Act and the Investment Company Act, or the rules and regulations thereunder, at issue in this proceeding. There is no doubt these requirements have been met here, given the findings in the OIP.

The imposition of a penalty must also be in the public interest. When determining whether a penalty is in the public interest, the Commission may consider, among several factors, whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, the harm to others resulting either directly or indirectly, and the extent to which the person was unjustly enriched,

SGC's President. The Division has not included such payments because of limitations inherent in the receivership proceedings.

taking into account any restitution. *See, e.g.*, Section 203(i)(3)(C) of the Advisers Act. Other factors include: (1) prior violations; (2) need for deterrence; and (3) such other matters as justice may require, are relevant to determining whether a penalty is in the public interest. *See* Advisers Act, §203(i)(3); Investment Co. Act, §9(d)(3); *Thomas C. Bridge*, 2009 SEC LEXIS 3367, *98 (2009) (citing Exchange Act Section 21B(c)).

Respondent Comeaux cannot seriously dispute that these factors are present here. The findings included in the OIP and the facts deemed true for purposes of this Motion conclusively establish that Comeaux committed fraudulent misconduct that resulted in significant monetary gain. Likewise, while Respondent Comeaux does not appear to have any prior securities laws violations, given the egregious misconduct here, there is a significant need for deterrence.

Penalties are statutorily authorized in three tiers. Where the violative act or omission at issue involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, second tier penalties of $65,000 per violation may be imposed. If the violative act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission, the Commission may impose a third tier penalty of $130,000. 17 C.F.R. §201.1001-.1003. These penalty amounts apply to each act or omission occurring after February 15, 2005 and on or before March 3, 2009. *Id.*[4] Here, third-tier penalties are appropriate given the scope of the fraudulent conduct, the risk (and fact of) significant resulting substantial losses, and the significant ill-gotten gains.

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[4] For violations before February 2005, third-tier penalties were $120,000 per violation.

The Division recognizes that Comeaux entered a settlement as to liability and that, as part of that settlement, agreed to be barred from the securities industry. He also agreed, as part of that settlement, to make himself available for interviews with Division staff in anticipation of a related proceeding against other former SGC executives. In addition, the Division notes that it appears likely other former executives of SGC may have been aware of even more information than Comeaux that called into question the propriety of marketing the SIB CD.

Nevertheless, in view of the egregiousness of the fraud as further described above, including Comeaux's intentional misconduct, the significant monetary gain Comeaux obtained as a result of that fraudulent conduct and the resulting substantial losses, the Division respectfully requests that the Court enter a maximum third-tier penalty against Comeaux.[5]

Conclusion

For the reasons set forth above, the Division respectfully requests that the Court order Comeaux to disgorge all of the payments he received from SGC, plus prejudgment interest, and pay a maximum third-tier civil penalty.

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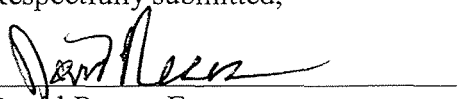
[5] The Division notes that it may be appropriate in situations where it is difficult to determine the precise number of violations to apply a penalty based on the Respondent's pecuniary gain. *See SEC v. CMKM Diamonds, Inc.*, 635 F. Supp. 2d 1185, 1192 (D. Nev. 2009) (where, considering the difficulty of determining the number of violations, the court calculates third-tier civil penalties by imposing a flat penalty equal to each defendant's gross pecuniary gain).

Dated: March 28, 2013

Respectfully submitted,



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