UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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| **In the Matter of**<br>**Jay T. Comeaux**<br>**Respondent.** | **ADMINISTRATIVE PROCEEDING**<br>**File No. 3-15002** |

**RESPONDENT'S RESPONSE**
**TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION**

Respondent Jay T. Comeaux ("Comeaux" or "Respondent") files this Response to the Division's Motion for Summary Disposition as to Monetary Relief (the "Motion").

## I. INTRODUCTION

While this Response does not argue that Comeaux did not violate federal securities laws nor does it dispute the allegations deemed true for purposes of this proceeding, Comeaux vehemently challenges the Division's request for monetary sanctions. Contrary to the Division's position, the following undisputed facts demonstrate that a monetary sanction is inappropriate or should be very limited:

(1) Comeaux was not a principal actor in the creation or concealment of the Stanford Ponzi scheme;

(2) Comeaux has cooperated fully and extensively in this proceeding and in various agencies' investigations of the Stanford Entities and related individuals; and

(3) Comeaux has been stripped of his license and livelihood as a result of the permanent bar previously ordered.

As such, Comeaux asserts that the harsh sanctions already ordered against him—the permanent bar and cease and desist order—are sufficient sanctions for his violations.

## A. BACKGROUND

In anticipation of a public administrative and cease-and-desist proceeding, on December 1, 2011, Comeaux submitted an Offer of Settlement ("Offer") to the Securities and Exchange Commission ("Commission") pursuant to Section 8A of the Securities Act of 1933 ("Securites Act"), Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"), and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act"). As part of the Offer, Comeaux admitted to the jurisdiction of the Commission and, solely for purposes of these proceedings, consented to certain findings and remedial sanctions. *See* Offer at p.2.

The Commission accepted the Offer on August 31, 2012 in its Order Instituting Administrative and Cease-and-Desist Proceedings (the "OIP"). *See* OIP at p.2. In the Offer and OIP, Comeaux agreed that he would not argue that he did not violate the federal securities laws as described in the OIP and the allegations of the OIP would be deemed true by the hearing officer. *See* Offer at p.5. Comeaux, however, vigorously challenges the Division's request for monetary sanctions as unjust, unreasonable in light of the circumstances, and insupportable.

## B. ALLEGATIONS DEEMED TRUE

Although in its Motion the Commission seems eager to attach additional culpability and misconduct to Comeaux by nature of association with Allen Stanford ("Stanford"), Jim Davis ("Davis"), Laura Pendergest Holt ("Holt"), and the Stanford Entities, the following are the only violations deemed true as to Comeaux for purposes of this proceeding:

- Because Comeaux could not confirm Stanford Investment Bank's ("SIB") representation regarding the safety of the SIB CDs and the liquidity of SIB's investment portfolio, Comeaux did not have a reasonable basis to recommend SIB CDs to investors (OIP at p.4);

- By failing to fully disclose Stanford Group Company ("SGC") and his own financial interest in selling the SIB CDs, Comeaux failed to disclose material conflicts of interest (*id.*);
- As a result of these inactions, Comeaux willfully violated and aided and abetted and caused violations of Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities (*id.* at p.4-5);
- Comeaux willfully aided and abetted and caused violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the purchase and sale of securities (*id.* at p.5);
- Comeaux willfully aided and abetted and caused violations of Sections 206(1) and 206(2) of the Advisers Act, which make it unlawful for an adviser to employ any devise, scheme, or artifice to defraud any client or prospective client or to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client. (*Id.*)

The Commission also is bound by these findings, which simply do not support the notion that Comeaux was in any way involved with the principal acts of fraud and deceit perpetrated by Stanford, Davis, Holt, and others. Instead, based solely on the above mentioned violations, which Comeaux does not dispute, the Court must now determine, in its discretion, the appropriate sanctions for such violations, giving regard to the sanctions previously agreed to, Comeaux's circumstances, and the public interest.

## C. CONSENT TO SANCTIONS

As part of his Offer and cooperation with the Commission, Comeaux consented to the entry of the OIP and the imposition of substantial sanctions under Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Section 9(b) of the Investment Company Act. Offer at p. 6. In view of the facts alleged and the violations deemed true, the Commission previously deemed it appropriate in the public interest to impose the following sanctions:

- Comeaux shall cease and desist from committing or causing any violations and any future violations of Section 17(b) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder ,and Sections 206(1) and 206(2) of the Advisers Act (OIP at p.6);

- Comeaux is barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization; prohibited 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 or affiliated person of such investment adviser, depositor, or principal underwriter; and barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. (*Id.*)

The permanent bar can "permanently deprive" a respondent of "his career and livelihood" and is a harsh remedy by itself. *See S.E.C. v. Jasper*, No. C 07-06122, 2010 WL 8781211 at *10-11 (N.D.Cal. Jul. 21, 2010) (noting that the permanent bar can be an "unduly harsh" and "draconian" sanction in certain circumstances); *Arthur Lipper Corp. v. S.E.C.*, 547 F.2d 171, 184 (2d Cir. 1976) (describing the permanent bar as severe). Comeaux has complied with these sanctions; will hereafter continue to comply with these sanctions; has assured the Commission that he will not commit future violations; recognizes the wrongfulness of the violations; and has assured the Commission that any future occupation will not present opportunities for future violations. Comeaux's career and the profession by which he supported his family's livelihood have been taken away by the sanctions already ordered. Indeed, the permanent bar has ended his career in the securities industry and will force him, at 65 years old, to transition to an entirely different venture at this point in his and his family's life. *See* Affidavit of Jay T. Comeaux ("Comeaux Aff."), attached as **Exhibit A**, at ¶¶ 3-8.

**D. AGREEMENT FOR FURTHER COOPERATION**

In addition to these significant, punitive sanctions, Comeaux also agreed to appear and be interviewed by Commission staff at such times and places as the staff requests. OIP at p.5. Further, Comeaux agreed to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the

allegations in the complaint or order or proceedings." Offer at p.7 (citing 17 C.F.R. § 202.5(e)). Comeaux agreed not to take any action to make or permit to be made any public statement denying, directly or indirectly, any finding in the OIP or creating the impression that the Order is without factual basis. *Id.*

As demonstrated more fully below, at all times Comeaux complied with these agreements and provided regular and substantive cooperation with the Commission in this and other proceedings. Finally, Comeaux agreed to additional proceedings to determine what, if any, monetary sanctions would be deemed in the public interest. OIP at p.5.

Despite the vast weight of the factors in his favor, including: (1) Comeaux's record of working fully and cooperatively with the Commission; (2) his lack of any prior violations; (3) the sincerity of his assurances that he would not commit future violations; (4) his recognition of the seriousness of the allegations and the wrongful nature of his conduct; and (5) the unlikeliness that his future occupation (if any) will present opportunities for future violations, the Commission now seeks additional monetary sanctions in amounts that are unjust, unreasonable, and insupportable.

Comeaux has accepted the Commission's cease and desist order and permanent bar. The permanent bar has precluded him from participation in the profession he worked in for over 20 years. Comeaux respectfully requests that the Court order that the currently imposed sanctions are in the public interest and sufficient for his violations. In the alternative, Comeaux requests that the Court find that the just discretionary monetary sanction is limited to the disgorgement of the direct Commissions earned on the sale of SIB CDs and that no further sanction would be in the public interest.

## II. ARGUMENT AND AUTHORITIES

### A. APPLICABLE STANDARDS

This Commission has broad discretion to set sanctions in administrative proceedings. *See Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 188-89 (1973); *In re Philip A. Lehman*, Release No. 34-54660, 2006 WL 3054584 at *3 (Oct. 27, 2006). When the Commission determines administrative sanctions, it considers the following factors:

(1) the egregiousness of the defendant's actions;
(2) the isolated or recurrent nature of the infraction;
(3) the degree of scienter involved;
(4) the sincerity of the defendant's assurances against future violations;
(5) the defendant's recognition of the wrongful nature of his conduct; and
(6) the likelihood that the defendant's occupation will present opportunities for future violations.

*See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (quoting *SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)), *aff'd on other grounds*, 450 U.S. 91 (1981).

In addition, the Commission must determine sanctions pursuant to a public interest standard. In considering whether a sanction is in the public interest, the Commission may consider the following factors:

(1) whether the act for which the penalty is assessed involved fraud, deceit, manipulation, or deliberate reckless disregard of a regulatory requirement;
(2) the harm to other persons as a result of the respondent's actions;
(3) the extent to which the respondent was unjustly enriched, taking into account any restitution made to persons injured by the behavior;
(4) whether the respondent previously violated federal securities (and other) laws;
(5) the need for deterrence; and
(6) other matters as justice may require.

*See* Exchange Act §§ 21B(c); Advisors Act §§ 203(i)(3); and Investment Company Act §§ 9(d)(3).

An analysis of these factors demonstrates that the sanctions requested by the Commission are not in the public interest, are unreasonable, and are overreaching.

1. Nature of Comeaux's Actions

The first three of the *Steadman* factors relate to the nature of the respondent's actions and violations. *See Steadman*, 603 F.2d at 1140. These factors are the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, and the degree of scienter involved. *Id.* Although Comeaux does not challenge that his conduct constituted violations of the relevant securities law, he does assert that, in this circumstance, each of these factors weighs either in favor of the sanctions he requests the Court adopt, or, at a minimum, fails to support the heightened sanctions sought by the Division.

First, Comeaux does not dispute the seriousness of his deemed violations and, in fact, does not dispute the egregious nature of Stanford's, Davis', Holt's, and the Stanford Entities' violations. Comeaux, however, urges the Court to consider only *his* violations – and disregard the Division's attempt to impose the substantially more egregious conduct of others to him.

Comeaux has never been identified as a principal actor in, or a primary target of, the Commission's (or criminal) investigations into the creation and concealment of the Ponzi scheme by Stanford and the Stanford Entities. As plainly stated in the OIP, Comeaux's violations result from the fact that he could not confirm SIB's representation regarding the safety of the SIB CDs and the liquidity of SIB's investment portfolio. As a result of this failure, he did not have a reasonable basis to recommend SIB CDs to investors. OIP at p.4. Comeaux also does not dispute that he knew that SIB did not, and would not, disclose the details of its investment holdings to him or others within the Stanford Entities. *Id.* at p.3. Comeaux concedes that, other than his reliance upon SIB's representations, he did not have any basis in fact to use SIB

promotional marketing material to represent SIB to investors. *Id.* Comeaux has also deemed true that he knew that SIB did not maintain a comprehensive insurance program for its CDs, yet he used a brochure that represented to investors that it did. *Id.* at p.4. Further, by failing to fully disclose SGC's and his own financial interest in selling the SIB CDs, Comeaux failed to disclose material conflicts of interest. *Id.*

Yet, all of these violations relate to Comeaux's lack of knowledge, unreasonable reliance on others' representations, and failures to disclose. The real growth in deposits at SIB began in 2005 after Comeaux was no longer President of SGC, but only Executive Director and Houston branch manager. There is no allegation, deemed true or otherwise, that Comeaux was the mastermind, principal actor, or otherwise responsible for SIB or others' misrepresentations or schemes, nor is there any allegation that Comeaux himself created the untrue marketing statements. In its original indictment of Stanford, the Department of Justice ("DOJ") expressly stated that "Stanford, Davis and others *did not disclose to*, and *actively concealed from*, investors, SGC and [SIB] employees, and others the fact that approximately $4.8 billion in purported Tier III investments consisted of such artificially valued real estate and notes on personal loans to Stanford." *See* Indictment, No. H-09-342 in the United States District Court for the Southern District of Texas, Houston Division (June 18, 2009) (emphasis added). In fact, the Division concedes that "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." Motion at p.12. While Comeaux recognizes his wrongful conduct in failing to disclose material items, including the fact that he could not confirm representations being made to him, the nature of these violations are such that he unjustifiably relied upon the egregious conduct of others. This conduct, while a violation of the securities laws, pales in comparison to the conduct of those

who masterminded the Stanford schemes; concealed those schemes; and, in turn, made the misrepresentations that Comeaux relied upon. Comeaux avers that his violations were not so egregious as to demand heightened sanctions.[1]

Next, Comeaux asserts that his violations were not of a recurrent nature. Comeaux was active in the securities and investment community for more than 20 years, prior to accepting the permanent bar as part of the OIP. Comeaux Aff. at ¶ 4. Other than this incident, Comeaux has no other history of securities infractions. *Id.* at ¶ 9. In all those years, Comeaux never had a single client complaint registered against him. *Id.* Further, while it is undisputed that Comeaux failed to disclose material information to investors, the Division has only demonstrated the wrongful use of SIB marketing material and training material, and failure to disclose his own financial interest in selling the SIB CDs. OIP at p.3-4. This activity does not demonstrate a recurrent nature of infractions that would necessitate or justify heightened sanctions.

Finally, the Division has failed to demonstrate any heightened intent by Comeaux to deceive his investors. Once again, Comeaux does not dispute that his lack of a reasonable basis to recommend the SIB CDs to investors and his failure to disclose his financial interest in selling the SIB CDs constituted willful violations of, and the willful aiding and abetting the violations of, the applicable securities laws. Yet, the Division has not demonstrated (or even alleged) that Comeaux was ultimately culpable for the actual Ponzi scheme organized and concealed by Stanford and the Stanford Entities. *See* Motion at p.12 (noting that others were likely more aware of the misinformation than Comeaux). While Comeaux takes full responsibility for *his* violations, the Division's Motion attempts to attribute the intent of Stanford and the Stanford

[1] In fact, rather than attempt to address the actual egregious nature (or lack thereof) of Comeaux's violations, the Division merely makes the conclusory statement that "given the egregious misconduct here..." This is typical of the Division's attempt to impute the misconduct of Stanford, the Stanford Entities, and others' misconduct to Comeaux.

Entities to Comeaux. Based solely on the violations deemed true in the OIP, the Division has not demonstrated the heightened degree of scienter necessary to impose maximum monetary sanctions in addition to the permanent bar already imposed.

2. **Comeaux's Post-Violation Conduct**

The final three Steadman factors relate to the nature of the respondent's post-violation conduct: the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations. These factors clearly weigh in favor of the sanctions Comeaux requests that the Court order—the sanctions already imposed by the Commission—and against those that the Division requests.

Comeaux states unequivocally that he will not commit future violations of the securities laws. Comeaux Aff. at ¶ 5. Comeaux accepted the permanent bar and, as a result, will not be employed in the securities industry again. *Id.* at ¶ 5. In fact, since accepting the permanent bar, Comeaux has not had full time employment in any industry. *Id.* at ¶¶ 2, 4-6. Comeaux has clearly demonstrated that he will not commit future violations and intends not to put himself in the position to be presented with the opportunity for future violations. *Id.* ¶¶ 4-6. The Division did not offer any evidence to suggest that Comeaux is or could be a threat to commit violations in the future.

Further, from the early stages of the Commission's investigation into Stanford and the Stanford Entities, Comeaux cooperated with the Commission. In anticipation of these proceedings, Comeaux submitted an offer of settlement, accepted the terms of the OIP, accepted the harsh sanctions therein, and has acknowledged the wrongful nature of his conduct. *See* Offer, OIP, and Comeaux Aff. at ¶¶ 3, 8. Although the Division ignores these factors, it is

obvious that Comeaux's post-violation conduct weighs heavily in favor of lesser sanctions and, at a minimum, do not support the Division's request for heightened sanctions.

3. **Public Interest**

In addition to the *Steadman* factors, the Court must determine what sanctions are in the public interest. Contrary to the Division's conclusory treatment of the public interest factors,[2] Comeaux does dispute that the factors weigh in favor of additional heightened sanctions.[3] A thorough analysis of the public interest factors as a whole demonstrates that additional, and specifically heightened, sanctions are unjust and unnecessary.

In its bare discussion of the public interest factors, the Division only states that the findings and facts deemed true for purposes of the OIP and this proceeding establish that Comeaux committed fraudulent misconduct that resulted in monetary gain. Comeaux does not dispute the nature of the deemed violations or that he received commissions of at least $1.3 million on the sale of SIB CDs. Yet, that alone does not constitute the public interest inquiry.

One factor the Court may consider is the extent to which the respondent was unjustly enriched, taking into account any restitution made to persons injured by the behavior. *See* Exchange Act §§ 21B(c); Advisors Act §§ 203(i)(3); and Investment Company Act §§ 9(d)(3). While Comeaux does not dispute that he received commissions of at least $1.3 million, it is also true that Comeaux has in excess of $1.4 million[4] in assets frozen and subject to the control of the court-appointed receiver in *SEC v. Stanford*. Comeaux Aff. at ¶ 10. Comeaux has not had access to or been in control of those assets, or the income from those assets, since 2009. Yet,

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2 "Comeaux cannot seriously dispute that these factors are present here." Motion at p.11.

3 As previously noted, Comeaux has accepted the cease and desist order and permanent bar, and acknowledged that those sanctions are indeed in the public interest.

4 This amount includes $237,000.00 in a Merrill Lynch IRA that is not related to Comeaux's earnings from SGC.

Comeaux has paid taxes on that income (even though he has not received it) each tax year since it was frozen. *Id.* The Commission has previously agreed that those assets, the final value of which will be determined at the time of entry of a final order in this matter, will be credited against any monetary sanctions ordered against Comeaux in this matter, if such monetary sanctions are even warranted.[5] OIP at p.5. The Division entirely ignores this in its Motion.

Another factor the Division glosses over is the undisputed fact that Comeaux has no previous violation of federal securities or other laws. Comeaux Aff. at ¶ 9; Motion at p.11. Comeaux worked for nine years in the securities industry prior to joining the Stanford Entities with no suggestion of violations. Comeaux Aff. at ¶¶ 4, 9; OIP at p.2. In addition, Comeaux states that he will not violate such laws in the future, and does not even intend to work in the securities industry to be presented with future opportunities to do so. Comeaux Aff. at ¶¶ 5-6. As such, this factor weighs in favor of a lesser sanction.

Without discussion or analysis, the Division makes the conclusion that "there is a significant need for deterrence." Motion at p.11. The severe sanctions requested by the Division, however, would have little deterrent effect and may, in fact, do the opposite. First, because Comeaux has agreed to the cease and desist order, accepted the permanent bar, and made clear that he does not intend to be employed in the securities industry again, additional heightened sanctions will have no additional deterrent effect on Comeaux.

More broadly, however, the DOJ and Commission investigations and proceedings against Stanford, Davis, Holt, the Stanford Entities, and others have been public and received wide media exposure. On June 14, 2012, Stanford was sentenced to 110 years in prison for

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[5] Comeaux asserts that no additional monetary sanctions are warranted and the sanctions already imposed (the cease and desist order and the permanent bar) are sufficiently punitive when his circumstance is viewed in light of the *Steadman* factors, the public interest factors, and his cooperation with the Commission and other government agencies.

orchestration of the Ponzi scheme. *See* Department of Justice Press Release, June 14, 2012. Davis, who pleaded guilty and cooperated with the government, was sentenced to 60 months in prison. *See* Department of Justice Press Release, January 22, 2013. Holt also pled guilty and was sentenced in September 2012 to 36 months in prison, and the District Court specifically noted that she did not have the ability to pay a fine. *See* Department of Justice Press Release, September 13, 2012. Numerous other individuals and entities have also received significant sentences and sanctions or continue to await final determinations. A severe monetary sanction of Comeaux, a bit player in the overall scheme, would serve no additional deterrent effect.

In fact, the opposite is likely true. Contrary to the purpose of deterring future misconduct, the imposition of the monetary sanctions sought by the Division on a respondent willing to recognize his or her conduct and cooperate with the Commission will only deter individuals from cooperating with the Commission in the future. The need for deterrence does not support the heightened sanctions requested by the Division.

The Commission may also take into account "other matters as justice may require." Comeaux strongly urges the Court to also take into account his extensive cooperation, current financial condition,[6] age and stated intent not to re-enter the profession, and the substantial amount of assets frozen for the past five years and subject to the control of the court-appointed receiver. When taken as a whole, the public interest factors demonstrate that that the cease and desist order and permanent bar are sufficiently harsh, but just, sanctions for the deemed violations.

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[6] Comeaux's cooperation and financial condition are addressed below.

## B. COMEAUX'S EXTENSIVE COOPERATION

The Division's Motion essentially ignores Comeaux's substantial cooperation with the Commission that has (1) demonstrated Comeaux's recognition of the wrongful nature of the violations; (2) dramatically lessened the time and expense involved in the Commission's proceedings in this matter; and (3) benefited the Commission in various other proceedings related to the Stanford Entities and related individuals.

In fact, Comeaux has cooperated with the Commission, the FBI, and the DOJ throughout their investigations of the Stanford Entities. On May 21, 2009, Comeaux and his lawyer, Dan Hedges ("Hedges"), met for several hours with Assistant U.S. Attorney Gregg Costa and an FBI agent. *See* Affidavit of Daniel K. Hedges ("Hedges Aff."), attached as **Exhibit B**, at ¶ 4(a). Mr. Costa was the lead prosecutor at Allan Stanford's trial in 2012. *Id.*

On April 27, 2010, Comeaux was interviewed for several hours by Commission attorney Kevin Edmundson and other Commission attorneys. Mr. Comeaux did not refuse to answer any questions. He answered every question to the best of his knowledge. *Id.* at ¶ 4(b).

On August 18, 2010, Comeaux was again interviewed for several hours by the Commission. Again, he answered all of their questions. *Id.* at ¶ 4(c).

On April 29, 2011, Comeaux and Hedges travelled to Fort Worth, Texas, from Houston at the request of the Commission. In Fort Worth, Comeaux again answered all of the questions he was asked for several hours. *Id.* at ¶ 4(d).

On December 1, 2011, Comeaux submitted the Offer and agreed to accept a cease and desist order and the permanent bar. *See* Offer at p.6. The Offer obviated the need for the Commission to conduct a contentious, expensive, and time consuming adversary hearing. Comeaux has also complied with his agreement not to take any action or make or permit to be

made any public statement denying, directly or indirectly, any finding in the OIP. Comeaux Aff. at ¶ 7.

On February 17, 2012, as the Allan Stanford trial approached, Comeaux spent half an hour answering questions transmitted by Hedges from an FBI agent. Hedges Aff. at ¶ 4(e).

On January 22, 2013, Comeaux and Hedges met with Commission attorneys for over five hours to review Comeaux's testimony in the upcoming trial in this Court of Daniel Bogar, Jason Green, and Bernerd Young. *Id.* at ¶ 4(f).

On February 8, 2013, Comeaux and Hedges met with SEC attorneys for over two hours for the same purpose. *Id.* at ¶ 4(g).

On February 14, 2013, Comeaux and his attorney waited outside the courtroom for four hours. Comeaux then spent three hours testifying before this Honorable Court. He responded fully and truthfully to every question he was asked by Commission counsel and three defense attorneys. *Id.* at ¶ 4(h).

Comeaux has been cooperating in the Stanford investigation for four years. He has answered questions from three federal agencies. His attorney has spent fifty-five hours preparing for, participating in, and travelling to and from those interviews and trial. *Id.* at ¶ 4. Comeaux's cooperation has been extensive and he should be given credit for it when assessing sanctions against him.

The Division essentially ignores both the undisputed fact that Comeaux has agreed to settle the claims made by the Commission and his extensive cooperation throughout the proceeding. It is well-established, however, that the determination of appropriate remedial action depends on the facts and circumstances of each case. *See In re Joseph John Vancook*, Release No. 34-61039, 2009 WL 4005083 at *19 (Nov. 20, 2009). In fact, parties that "settle

disciplinary proceedings often receive less severe sanctions than those who do not." *See In re Justin F. Ficken*, Release No. 34-58802, 2008 WL 4610345 at *4 n.31 (Oct. 17, 2008) (collecting cases and quoting *Phlo Corp.*, Exchange Act Rel. No. 55562 (Mar. 30, 2007) that "the rationale for the imposition of lower sanctions is, at least in part, that settlement lets the Commission avoid time-consuming adversary proceedings and the concomitant expenditure of staff resources"); *In re J.H. Goddard & Co., Inc.*, et al., Release No. 34-7618, 1965 WL 87926 at *4 (June 4, 1965) (giving consideration to the fact that the case was decided upon a stipulation of facts and offer of settlement and that the respondent had been in the securities business for over 30 years without other disciplinary proceedings); *In re Stonegate Sec., Inc.*, Release No. 44933, 55 S.E.C. 346, 355 (2001) (noting that respondents who offer to settle may properly receive lesser sanctions based on considerations such as avoidance of time and manpower consuming adversary proceedings). Comeaux's extensive cooperation in and of itself demonstrates that the sanctions previously imposed are sufficient for his violations. *See In re Leo Glassman*, Admin. Proceeding No. 3-3758 at p.10 (Mar. 25, 1975) (giving consideration to respondent's cooperation and agreement that sanctions were appropriate).

Based upon the *Steadman* factors, the public interest, and his extensive cooperation, the Court should find that the severe sanctions previously imposed are sufficient and just given the nature of Comeaux's violations. In the alternative, however, if the Court determines that any additional monetary sanctions are warranted, Comeaux objects to the unreasonable disgorgement amounts and the heightened penalties requested by the Division as without proper basis; excessive; and unjust given his lack of ability to pay.

C. DISGORGEMENT

The Division bears the initial burden of persuasion that its disgorgement figure reasonably approximates the amount of unjust enrichment. *See S.E.C. v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C.Cir. 1989). The Division has failed to meet this burden. Assuming, however, the Commission determines that the Division's burden is met, Comeaux provides evidence to demonstrate that the Division's estimates and calculations are not a reasonable approximation of unjust enrichment. *First City Fin. Corp.*, 890 F.2d at 1232. The award of disgorgement against Comeaux would be inequitable under the present circumstances.

The Commission may exercise its equitable power of disgorgement only over property that the Division demonstrates is *causally related to the wrongdoing*. *Id.* at 1231 (emphasis added). Disgorgement serves two purposes: (1) to deter wrongdoing, and (2) to prevent unjust enrichment. *See S.E.C. v. McCaskey*, No. 98CIV6153SWKAJP, 2002 WL 850001 at *8 (S.D.N.Y. Mar. 26, 2002). Disgorgement may not be used punitively. *First City Fin. Corp.*, 890 F.2d at 1231; *McCaskey*, 2002 WL 850001 at *8. Therefore, the Commission generally must distinguish between legally and illegally obtained profits. *First City Fin. Corp.*, 890 F.2d at 1231. Although the Division must only demonstrate a reasonable approximation of the profits causally connected to the violation, this is not a complicated market timing case in which exact calculations "can be a near-impossible task." *Id.* Given the fact that any disgorgement deemed necessary is easily calculable, the Division's requested disgorgement is insupportable and unreasonable.

I. Objections to Division Evidence

Comeaux makes the following objections to the Division's evidence in support of its disgorgement calculations: (1) the Declaration of Karyl Van Tassel is conclusory, fails to

adequately explain the source of funds, and fails to establish that it is based on personal knowledge; (2) the Division's (and Ms. Van Tassel's) calculations contain obvious errors which cast doubt on the calculations as a whole; and (3) the Division makes no attempt to causally link receipts to Comeaux's violations.

(a) ***Objections to the Declaration of Karyl Van Tassel***

Although Comeaux does not challenge the credentials of Ms. Van Tassel,[7] the declaration attached as Ex. A to the Division's Motion is conclusory, it fails to adequately explain the source of the funds discussed, and it fails to explain how the information contained therein is within the personal knowledge of Ms. Van Tassel.

In order to justify a finding of disgorgement, the Division must "explain adequately the source of funds." *See S.E.C. v. Seghers*, 2010 WL 5115674, 404 Fed. Appx. 863, 864 (5th Cir. 2010) (holding that the Commission has not met its burden where the supporting declaration is merely conclusory). In order to provide non-conclusory evidence, the Division must provide data whereby the calculations performed can be replicated—not merely accepted at face value. *Id.*

Comeaux objects to the Van Tassel Declaration, its calculations related to Comeaux, (¶¶ 8-9), and its supporting schedule (KVT-7) as conclusory. The Van Tassel Declaration fails to attach, or reference, the actual data its calculations are based on. The one paragraph that even purports to contain "calculations" includes only subtotals and fails to demonstrate individual payments received. Motion at Ex. A ¶ 9. As its sole supporting schedule (KVT-7), the Division includes a spreadsheet that contains nothing but two numbers and a total column. The schedule

[7] Comeaux would point out, however, that the Fifth Circuit's comments related to Ms. Van Tassel's work (Motion at n.2) are in relation to her work as the Receiver's forensic account – and specifically her determination that a Ponzi scheme existed and its related concealment – not to any calculations (or determination) regarding Comeaux. This is another example of the Division attempting to impute the violations and culpability of other persons to Comeaux.

states that it is "based on available source data" – without providing that data, or even explaining what it constitutes. Motion at Ex. KVT-7. Without providing the underlying data and explanations of how these figures were generated, neither Comeaux nor the Commission is able to test and/or recreate the calculations. In fact, as discussed below, the total calculation asserted by the Division does not tie to Comeaux's tax returns for the periods of time involved, suggesting a flaw in the underlying data, which was not provided. *See* Comeaux Aff. at ¶ 11.[8] Because the Van Tassel Declaration is conclusory and fails to adequately explain the source of funds involved, the Division has failed to meet its burden that its disgorgement calculation reasonably approximates unjust enrichment.

While it is clear from the declaration that FTI Consulting, Inc. ("FTI") and Ms. Van Tassel worked as the forensic accountant for the Receiver of the SIB and the rest of the various Stanford Entities from at least 2009 through 2011, Ms. Van Tassel left FTI in December 2011 to become a partner with PricewaterhouseCoopers LLP ("PwC"). *See* Motion at Ex. A. All of the related, supporting declarations attached by the Division are clearly dated during Ms. Van Tassel's time as the Receiver's forensic accountant and her affiliation with FTI—not during her time with PwC. *See* Motion at Ex. KVT-1 – KVT-6. Although it is not stated directly, it appears that Ms. Van Tassel no longer holds the position of the Receiver's forensic accountant. Motion at Ex. A ¶ 2 ("I oversaw"). In her one declaration related to Comeaux, Ms. Van Tassel states that the "statements made in this declaration are true and correct based on the knowledge I have gained from the evidence[9] and many documents I have reviewed and other work I and my team

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[8] The Van Tassel Declaration states (without support) that Comeaux received "at least" $7,457,985.83 in total between January 15, 2005 and February 13, 2009 from SGC. Comeaux's tax returns total $6,264,598.00 for that period of time. Comeaux Aff. at ¶ 11.

[9] Ms. Van Tassel does not explain what evidence she relies upon and, as previously noted, cites only to one recreated spreadsheet (purportedly based on "available source data") that merely provides lump sum figures without detail.

have performed in the course of our investigation on behalf of the Receiver." Motion at Ex. A, ¶ 5. In addition to this statement, Ms. Van Tassel's declaration regularly refers to "we" or "her team," but gives no explanation if this is the FTI team from the 2009-2011 period or a new team at PwC. *Id.* at ¶¶ 3, 4, 7 and 8. Comeaux objects to the Van Tassel Declaration because the declaration does not state or explain how the work provided by Ms. Van Tassel as the Receiver's forensic accountant relates to the specific calculations regarding Comeaux and how that information, ostensibly created after her departure from FTI, is within her personal knowledge.[10]

(*b*) ***Clear Miscalculations Cast Doubt on the Division's Calculations***

Even in the minimal, conclusory figures that the Division provides, there are patent miscalculations that cast doubt on the rest of the amounts included.

Among the compensation the Division seeks to disgorge is $192,484.88 in reimbursed business expenses. *See* Motion at p.7 & Ex. A at ¶ 9(a)(ii). The Division does not provide any basis for disgorgement of such receipts. There is no rational basis for considering reimbursable business expenses as "unjust enrichment." In addition, the Division includes $1,564,640.12 in "Other Commissions" in its disgorgement calculation. Yet, it does not explain what product these commissions were earned on or whether they are in any way linked to Comeaux's violations. The Division even includes $13,500 for "Miscellaneous," $10,400 for "Other," and $12,500 for "Retro Pay." Not only are these alleged receipts not linked to any violations, they are not even explained. The fact that the Van Tassel Declaration and the Division's calculations include these receipts—items that cannot reasonably be considered unjust enrichment—demonstrates that its disgorgement figure *does not* reasonably approximate the amount of unjust enrichment.

[10] Comeaux further objects to Paragraphs 10 and 11 of the Van Tassel Declaration as irrelevant. These paragraphs relate to Ms. Van Tassel's conclusion that the Stanford Entities were collectively operated as a Ponzi scheme, but fail to relate to (or even mention) Comeaux's violations.

The Division, and Ms. Van Tassel, duplicated at least one subtotal under two categories, i.e., double counting. In Paragraph 9(a)(i) (Employment Compensation), Ms. Van Tassel includes "$289,010.00 between April 30, 2008 and January 30, 2009. These payments include, but are not limited to, payments described as wages, commissions, bonuses, etc." Motion at Ex. A ¶ 9(a)(i). Yet, those same payments (although the conclusory Declaration does not indicate multiple payments) are also included as "Upfront Loans." *Id.* at ¶ 9(b)(viii). The $289,010.00 (a figure that actually constitutes two loans, of $75,028.50 and $213,981.50) was only received once by Comeaux, but is included twice by the Division. Comeaux Aff. at ¶ 14. These "loans" or notes were for bonuses actually earned, but recorded so as to be "paid back" by service time (essentially a vesting program). *Id.* This program allowed SGC to record the bonus over the period of the notes. *Id.* These figures are improperly double counted in the Van Tassel Declaration.

The Division, and Ms. Van Tassel, also assert that Comeaux received a total of "at least" $7,457,985.83 from SGC between January 15, 2005 and February 13, 2009. Motion at p.4. Comeaux's tax returns for this period of time, however, demonstrate that he and his wife's combined total earnings were a maximum of $6,264,589.00. Comeaux Aff. at ¶ 11. Of course, since the Division fails adequately to explain the source of funds it claims, it is unclear where or how the miscalculations are made.

The inclusion of obvious non-ill-gotten receipts and these two clear miscalculations cast doubt on the Division's entire calculations – particularly in light of the fact that they have failed to provide any data to support their figures. As such, the Division has failed to meet its burden to reasonably approximate any purported unjust enrichment. For this reason alone, the Court

should accept Comeaux's cease and desist and permanent bar as the only appropriate and necessary sanctions.

(c) ***The Division makes No Attempt to Link "Receipts" to Comeaux's Violations***

It is well established that the Division does not meet its burden by merely asserting that Comeaux "received" funds, but instead it must distinguish between legally and illegally obtained profits. *First City Fin. Corp.*, 890 F.2d at 1231.

By requesting the disgorgement of (what it calculates is) the total amount of income Comeaux received from SGC, the Division makes no effort to meet its burden to distinguish and disgorge only illegally obtained funds. Even in its alternatively proffered and lower calculation,[11] the Division fails to properly demonstrate how these "receipts" are related to Comeaux's violations. Instead, it attempts to impute SIB's, SGC's, or other's conduct to Comeaux. The OIP is clear as to the violations of Comeaux: (1) Comeaux did not have a reasonable basis to recommend SIB CDs to investors (OIP at p.4); and (2) by failing to fully disclose SGC's and his own financial interest in selling the SIB CDs, Comeaux failed to disclose material conflicts of interest. *Id.* As such, the only "receipts" that can be causally connected to Comeaux's violations are receipts related to Comeaux's sale of the SIB CDs. The Division has provided no evidence that Comeaux's non-SIB CD commission compensation was in any way causally connected to his violations. It would be inequitable to sanction Comeaux with the dearth of evidence provided by the Division that his compensation derived from illegal profits. The Division's disgorgement calculation does not "distinguish between legally and illegally obtained profits," as is required. *First City Fin. Corp.*, 890 F.2d at 1231. Because the Division

[11] $3,386,974.50. Motion at p.4.

has failed to provide such a calculation, it has failed to meet its burden to reasonably approximate any purported unjust enrichment.

2. **The Division's Calculations do not Represent Unjust Enrichment -- Alternative Calculation 1**

Comeaux asserts that based upon the *Steadman* factors, the public interest, and his extensive cooperation, the Court should find that the severe sanctions previously imposed are sufficient. Comeaux also asserts that the Division has failed to meet its burden to demonstrate a reasonable approximation of the profits causally connected to the violation. In the event that the Court finds that burden has been met, and an abundance of caution, Comeaux provides the Court with two alternative calculations which demonstrate that the Division's calculations are not a reasonable approximation of unjust enrichment.

The purpose of disgorgement in the context of a Commission enforcement proceeding two-fold: (1) deterring wrongdoing, and (2) preventing the defendant's wrongdoing; it is not punitive. *McCaskey*, 2002 WL 850001 at *8; *First City Fin. Corp.*, 890 F.2d at 1231. For this reason, the Court may exercise its equitable power only over property "causally related to the wrongdoing." *First City Fin. Corp.*, 890 F.2d at 1231.

Because of Comeaux's cooperation and settlement, his violations are not in dispute: (1) Comeaux did not have a reasonable basis to recommend SIB CDs to investors (OIP at p.4); and (2) by failing to fully disclose SGC's and his own financial interest in selling the SIB CDs, Comeaux failed to disclose material conflicts of interest. *Id.* The only purported unjust enrichment that can be causally connected to Comeaux's violations are receipts actually related to Comeaux's sale of the SIB CDs. Any amounts in excess of this limited calculation are an attempt to punish Comeaux for an affiliation with Stanford, Davis, Holt, or the Stanford Entities.

Comeaux has admitted that he received direct commissions of at least $1.3 million on the sales of the SIB CDs. OIP at p.3. Because these are the only receipts that can be causally connected to his violations, this should be the maximum amount of disgorgement under consideration.[12]

3. **The Division's Calculations do not Represent Unjust Enrichment -- Alternative Calculation 2**

The Division, however, asserts (in its lower calculation) that Comeaux should also be disgorged of receipts tied to "the sale of SIB CDs by Comeaux and others at his direction." Motion at p.4. Although this assertion is contrary to the holding of *First City Fin. Corp.*, once again, in an abundance of caution, Comeaux provides the Court with an alternative calculation based on his actual bonus structure, in contrast to the Division's conclusory totals.

Comeaux's bonuses from 2005 through 2009 were based upon three factors: (1) asset growth; (2) revenues; and (3) profitability. Comeaux Aff. at ¶ 13. Not all of these factors included, or consisted entirely of, SIB CD revenues. *Id.* For example, the asset growth factor was greatly enhanced by recruiting new advisors/clients, who would move assets into the Houston branch. These were in in conventional assets when transferred and not necessarily placed in SIB product when moved. *Id.* Further, the revenue factor represented brokerage fees, other commissions, insurance products, and bank commissions, not only SIB commissions in total. *Id.* Based on his personal knowledge of the bonus structure[13] he was subject to, and the receipts from that bonus structure, SIB CD sales never constituted more than 50% of the bonus calculations. *Id.* Comeaux received a total of $1,834,000.00 in bonuses from 2005 through

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[12] With regard to prejudgment interest, Comeaux asserts that as a result of over $1.4 million of his assets being frozen and subject to the control of the Receiver since 2009, prejudgment interest is not warranted.

[13] The Division entirely fails to explain the bonus structure as it related to Comeaux, or what percentage of such bonuses was causally connected to his violations, if any.

2009. *Id.* As such, a maximum of $917,000.00 can be tangentially connected to Comeaux's violations.[14]

What is apparent is that the Division has failed to provide disgorgement calculations to the Court that reasonably approximate unjust enrichment as a result of Comeaux's violations. Although the Division may reply that it need only provide a "reasonable approximation" and that any "*uncertainty* should fall on the wrongdoer whose illegal coduct created that *uncertainty*." *First City Fin. Corp.*, 890 F.2d at 1232 (emphasis added). Yet, as demonstrated, this is not a case in which connecting the profit to the violation is complicated or *uncertain.*[15] Instead, this is a case in which the profits that resulted from Comeaux's conduct are both clear and limited—the commissions from the sales of SIB CDs. Because the Division has failed to meet its burden of persuasion that its disgorgement figure reasonably approximates any amount of unjust enrichment, its request for disgorgement should be denied.

**D. PENALTIES**

In light of the previous discussions regarding public interest, cooperation, and the severity of permanent bar, it is apparent that no further monetary penalties are warranted. Yet, the Division requests maximum third-tier monetary penalties, without substantively addressing the public interest factors at all.

To apply maximum third-tier penalties, the Division must demonstrate that the violation involved 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. 17 C.F.R. § 201.1001-.1003. The Division has not met this

[14] To be clear, Comeaux continues to assert that no monetary sanctions are warranted and, if any are, only those directly connected to his sale of SIB CDs should be considered. This calculation is only provided only as an alternative to the Division's assertion that disgorgement should include compensation tied to sale of SIB CDs by "others at his direction." Motion at p.4.

[15] The Division has presented no evidence that Comeaux's receipts from SGC were complicated to trace.

burden. First, the Division has provided the Court with no evidence whatsoever of any losses to persons as a result of Comeaux's violations. Once again, the Division merely attempts to impute the losses of the larger Stanford Ponzi scheme to Comeaux instead of providing the Court with directly relevant evidence. Further, as has been demonstrated, since 2009 the Receiver has been in control of $1.4 million in Comeaux's assets. Because the Division has not met its burden to meet the heightened requirements of third-tier penalties – and particularly in light of the public interest factors and Comeaux's cooperation with the Commission, third-tier monetary penalties are unwarranted and excessive.

**E. RESPONDENT'S FINANCIAL CONDITION**

The Commission seeks to impose disgorgement and civil penalties pursuant to Section 8A(e) of the Securities Act, Section 21B of the Exchange Act, Sections 203(i) and 203(j) of the Advisers Act and Section 9(d) of the Investment Company Act. *See* OIP at p.5-6. Under each of these provisions, the Commission may consider not only whether any such sanctions are in the public interest, but also evidence concerning the respondent's ability to pay such sanctions. *See* 17 C.F.R. § 201.630(a) ("[T]he 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"). *See also* Securities Act §§ 8A(g); Exchange Act §§ 21B(c)-(d); Advisors Act §§ 203(i)(3)-(4); and Investment Company Act §§ 9(d)(3)-(4). A lengthy record of Comeaux's extensive cooperation is chronicled above.

In any proceeding in which an order requiring payment of disgorgement, interest, or penalties may be entered, a respondent may present evidence of an inability to pay. *See* 17 CFR 201.630(a); and U.S. Securities and Exchange Commission, *Rules of Practice and Rules on Fair Fund and Disgorgement Plans* (2006) Rule 630(a) (the "Rules of Practice"). The Commission

or hearing officer may, in their discretion, consider evidence concerning ability to pay in determining whether such a payment is in the public interest. *Id.* Any respondent who asserts an inability to may be required to file a sworn financial disclosure statement and keep such statement current. *See* 17 C.F.R. at 201.630(b); and Rule 630(b).

Comeaux asserts his financial inability to pay monetary sanctions that may be assessed by the Commission. Pursuant to the Rules of Practice, Comeaux files the financial disclosure form attached as **Exhibit C**,[16] and moves, pursuant to Rule 322, for the issuance of a protective order against such disclosure of the information submitted to the public or to any parties other than the Division of Enforcement. *See* 17 CFR at 201.630(c); and Rule 630(c).

When setting the amount of sanctions, the ALJ (and/or district court) has broad discretion. *See S.E.C. v. Huffman*, 996 F.2d 800, 803 (5th Cir. 1993). The defendant has the burden to prove his inability to pay by a preponderance of the evidence. *Id.*

The attached financial disclosure form demonstrates that, as a result of frozen assets, acceptance of the association bar, and loss of employment as a result of the Stanford collapse, Comeaux has very limited ability to pay sanctions. *See* Exhibit C; *see also* Comeaux Aff. at ¶ 15. When Comeaux's lack of financial ability to pay potential sanctions is combined with the *Steadman* factors, the public interest factors, his history of cooperation, and the previously imposed permanent association bar, it is apparent that the Division's request for monetary sanctions is unjust, unreasonable in light of the circumstances, and insupportable and should be denied. Comeaux requests that the Court order that the sanctions already ordered are sufficient sanctions for his violations.

Dated: April 29, 2013.

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[16] In the interest of full disclosure, Comeaux's financial disclosure includes all his separate and community property assets as well as his wife's separate property (in which Comeaux has no ownership interest), but such assets are subject to applicable state law property exemptions (homestead, IRA, exempt personal property, etc.).

Respectfully submitted,

**PORTER HEDGES LLP**

By: /s/Daniel K. Hedges

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**Attorney for Jay T. Comeaux**

# EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

| | |
|---|---|
| In the Matter of<br>Jay T. Comeaux<br>Respondent. | ADMINISTRATIVE PROCEEDING<br>File No. 3-15002 |

## AFFIDAVIT OF JAY T. COMEAUX

State of Texas §
§
County of Harris §

BEFORE ME, the undersigned authority, on this day personally appeared Jay T. Comeaux, who is personally known to me, and who first being duly sworn by me, according to law, upon his oath deposed and stated the following:

1. "My name is Jay T. Comeaux. I am over the age of eighteen (18). I have never been convicted of a felony or a crime involving moral turpitude. I am fully competent to make this affidavit.

2. I am not currently employed. I was the President of Stanford Group Company ("SGC") from January 1996 until March 2005. I was the Executive Director of SGC from March 2005 through February 2009. As an Executive Director, my responsibilities were limited to management of the SGC Houston branch office. Through the experience in these positions, and my review of personal financial information, I have personal knowledge of all the facts stated herein and they are true and correct.

3. For purposes of this proceeding, I hereby incorporate into this affidavit testimony the Offer of Settlement of Jay T. Comeaux, filed with the Securities and Exchange Commission ("Commission") on December 1, 2011. In addition, for purposes of this proceeding, I accept, and do not challenge or dispute, the Commission's August 31, 2012 Order Instituting Administrative and Cease-and-Desist Proceedings (the "OIP") and understand that the allegations and violations contained therein are deemed true for purposes of this proceeding. I also understand that the OIP contains substantial sanctions - a cease and desist order and permanent bar – and I accept those sanctions and recognize the wrongful nature of those violations.

4. Prior to joining SGC, I worked for nine years at Merrill Lynch in Baton Rouge, Louisiana. I have 23 years' experience in the securities industry and it comprised my only earned income stream for myself and my family since 1986. I am currently 66 years old, and I have not had full time employment since February 2009.

5. I have complied with the sanctions ordered in the OIP and I will hereafter continue to comply with those sanctions. I hereby state unequivocally that I will not commit any future violations of federal (or other) securities laws.

6. As a result of the permanent bar I have lost my income, my career, and my livelihood. To that end, and as a result of the permanent bar, I will not be employed in the securities industry in the future and will, thus, not even be exposed to the opportunity for future violations. If I am able to obtain full time employment in the future to support myself and my wife, it will be in an entirely different industry.

7. I have also complied with the Commission's policy not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order or proceedings. Further, I have agreed not to take any action to make or permit to be made any public statement denying, directly or indirectly, any finding in the OIP or creating the impression that the Order is without factual basis.

8. I have, to the best of my ability, worked fully and cooperatively with various government agencies related to Stanford investigations, by meeting with, being interviewed by, and testifying on behalf of those agencies.

9. In my 23 year career in the securities industry, I have never received a single client complaint registered against me. Prior to this proceeding, I have never violated any federal (or other) securities laws. I have no prior record of securities infractions.

10. Currently, I have over $1.4 million in assets frozen and subject to the control of the court-appointed receiver in *SEC v. Stanford*. I have not had access to or been in control of those assets, or the income from those assets, since 2009. I have, however, paid taxes on that income (even though I have not received it) each tax year since it was frozen.

11. My family tax returns (married filing jointly along with my wife) include the following amounts for wages, salaries, tips, etc. for the relevant time periods: 2005: $1,383,287; 2006: $1,292,145; 2007: $1,698,066; 2008: $1,648,282; 2009: $242,818. This amounts to a total of $6,264,598. For 2010 and 2011, my wife and I had no ($0.00) wages, salaries, tips, etc. income.

12. With regard to my income while employed by SGC, while I earned a salary of $500,000 per year, that salary was essentially a draw against commissions and bonuses, not in addition to those amounts. The balance of my compensation was earned through either commissions or the SGC bonus structure.

13. Bonuses from 2005 through 2009 were based upon three factors: (1) asset growth; (2) revenues; and (3) profitability. Not all of these factors included, or consisted entirely of,

Stanford International Bank ("SIB") CD revenues. For example, the asset growth factor was greatly enhanced by recruiting new advisors/clients, who would move assets into the Houston branch. These were in conventional assets when transferred and were not necessarily placed in SIB product when moved. Further, the revenue factor represented brokerage fees, other commissions, insurance products, and bank commissions, not only SIB commissions in total. Based on my years of experience in the securities industry, my personal knowledge of this bonus structure, and my actual receipts from that bonus structure, the SIB CD sales never constituted more than 50% of the total bonus calculations. I received a total of $1,834,000.00 in bonuses from 2005 through 2009 (2005: $189,000; 2006: $381,000; 2007: $628,000; 2008: $523,000; 2009: $113,000).

14. A portion of my earned bonuses were converted into upfront loans via promissory notes. There were two such notes, one for $75,028.50 and a second for $213,981.50. The total, $289,010 was only received once by me. Although it was an earned bonus, for purposes of financial reporting, SGC recorded these bonuses as loans that would be "paid back" by service time (essentially a vesting program). This program allowed SGC to record the bonus over the period of the notes. I did not receive the $289,010 twice.

15. As a result of my loss of income, I am financially unable to pay significant monetary sanctions, if such sanctions are imposed. I have reviewed the financial disclosure forms attached to the Response they are a true and accurate reflection of my financial status."

Further affiant sayeth not.

Jay T. Comeaux

SUBSCRIBED AND SWORN TO before me on this 24th day of April, 2013.

Cynthia O. White
Notary Public

GYNTHIA O WHITE
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 21, 2016

My commission expires: 3/21/2016

# EXHIBIT B

**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

| | |
|---|---|
| **In the Matter of**<br><br>**Jay T. Comeaux**<br><br>**Respondent.** | **ADMINISTRATIVE PROCEEDING**<br>**File No. 3-15002** |

## AFFIDAVIT OF DANIEL K. HEDGES

Before me, the undersigned authority, appeared Daniel K. Hedges who, upon being duly sworn, did state under oath.

1. My name is Daniel K. Hedges. I am over eighteen years of age, of sound mind, and in all ways qualified to make this affidavit.

2. I have been a licensed attorney in the State of Texas since 1974. I am admitted to practice before all of the state and federal courts in Texas.

3. My law firm, Porter Hedges LLP, represents Jay Comeaux in the above numbered and titled matter. As part of his settlement with the SEC, Mr. Comeaux agreed to cooperate in the SEC's investigation of Stanford Financial and various individuals.

4. I have kept detailed time records of all of my work in representing Mr. Comeaux in this matter. By consulting my time records, I have determined that I have spent fifty-five hours preparing for, participating in, and travelling to, various interviews and a trial. I have determined that Mr. Comeaux cooperated with the SEC and other investigative agencies as follows:

a) On May 21, 2009, Mr. Comeaux and I met for several hours with Assistant U.S. Attorney Gregg Costa and an FBI agent. Mr. Costa was the lead prosecutor at Allan Stanford's trial in 2012.

b) On April 27, 2010, Mr. Comeaux was interviewed for several hours by SEC attorney Kevin Edmundson and other SEC attorneys. Mr. Comeaux did not refuse to answer any questions. He answered every question to the best of his knowledge.

c) On August 18, 2010, Mr. Comeaux was again interviewed for several hours by the SEC. Again, he answered all of their questions.

d) On April 29, 2011, Mr. Comeaux and I travelled to Fort Worth, Texas, from Houston at the request of the SEC. In Fort Worth, Mr. Comeaux again answered all of the questions he was asked for several hours.

e) On February 17, 2012, as the Allan Stanford trial approached, Mr. Comeaux spent half an hour answering questions transmitted by me from an FBI agent.

f) On January 22, 2013, Mr. Comeaux and I met with SEC attorneys for over five hours to go over Mr. Comeaux's testimony in the upcoming trial in this court of Bogar, Green, and Young.

g) On February 8, 2013, Mr. Comeaux and I met with SEC attorneys for over two hours for the same purpose.

h) On February 14, Jay Comeaux and I waited outside the courtroom for four hours. Mr. Comeaux then spent three hours testifying before this Honorable Court. He responded fully and truthfully to every question he was asked by SEC counsel and three defense attorneys.

Further affiant sayeth not.

Daniel K. Hedges

SWORN TO BEFORE ME, the undersigned authority on this 26th day of April, 2013.

Notary Public, State of Texas

CYNTHIA O WHITE
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 21, 2016