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 REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AS TO MONETARY RELIEF

To avoid being held accountable for his actions, Comeaux downplays the significance of his misconduct, misapplies applicable legal standards, and wrongly suggests his financial condition (despite having a net worth of over $1.5 million) should excuse him.[1] Because each of these arguments should be rejected and for the reasons set out in its initial memorandum, the Division respectfully requests that the Court require Comeaux to disgorge his ill-gotten gains, plus prejudgment interest, and pay a third-tier civil penalty.

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[1] As discussed below, the financial condition Comeaux reports does not include additional assets valued at roughly $1.4 million that are currently subjected to a preliminary injunction obtained by the Receiver in a fraudulent transfer action. Therefore, in truth, his net worth is more than that reflected on his financial statement.

Section V of the OIP provides that "[t]o the extent that any of the Respondent's assets are subject to the control of the court-appointed receiver in *SEC v. Stanford*, those assets, the 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 Respondent in this matter."

The Division has consulted with counsel to the Respondent and, based on available records, the parties agree those assets have a current value of $1,435,236.

However, while those assets are subject to the preliminary injunction and the $1,435,236 may therefore be credited against any award in this case, the Receiver's litigation against Comeaux is ongoing and it remains to be seen whether the Receiver will prevail. Accordingly, there is no reason to exclude

A. Comeaux's misconduct was serious and intentional, not merely inadvertent, and calls for full disgorgement and a significant monetary penalty.

Although he admits his misconduct was "serious," Comeaux argues that he should not receive any additional sanctions beyond agreeing, at the age of 65, to be barred from the securities industry.[2] The applicable standards related to the imposition of administrative penalties are well-established. Generally, to determine if administrative sanctions are in the public interest, the following six factors are considered: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) need for deterrence; and (6) such other matters as justice may require, are relevant to determining whether a penalty is in the public interest. *See Exchange Act* § 21B(c); Advisers Act, §203(i)(3); Investment Co. Act, §9(d)(3). The factors set out in *Steadman v. SEC* are similar. 603 F.2d 1126, 1140 (5th Cir. 1979) (considering egregiousness, isolated vs. recurrent nature; degree of scienter; sincerity of respondent's assurances against future violations and recognition of the wrongful nature of the conduct; and likelihood for recurrence).

As discussed below, these factors weigh heavily in favor of ordering full disgorgement and a significant monetary penalty. As a threshold matter, Comeaux's claim that his fraud was not of a recurrent nature ignores the undisputed facts. He states that "other than this incident" Comeaux had no other violations. But this was not an "incident." To the contrary, for roughly a decade, including years as the President of SGC, Comeaux made repeated material misrepresentations and omissions to investors, allowing him to earn sizable commissions over

those assets when considering Comeaux's financial condition generally for purposes of evaluating his financial condition.

[2] Comeaux also consented to the entry of collateral bars, but his response focuses on the fact that he will no longer legally be allowed to work in the securities industry. [See, e.g., Response at p. 4 "the permanent bar has ended his career in the securities industry"].

that time. The fact that he repeated the same lie and omitted the same material information each time does not mean his conduct was not "recurrent."

1. Comeaux's misconduct was serious, involved fraud and deceit, and required a high degree of *scienter*.

Comeaux suggests that he was merely negligent or, at worst, failed to meet a high standard because he was tricked by Stanford and others. This argument hinges on his attempt to focus on the fact there is no evidence that he was an architect or major player in Allen Stanford's Ponzi scheme. [See, e.g., Response at 8 ("[t]his conduct, while a violation of the securities laws, pales in comparison to the conduct of those who masterminded the Stanford schemes;"), 9 ("Yet, the Division has not demonstrated (or even alleged) that Comeaux was ultimately culpable for the actual Ponzi scheme").] But it is irrelevant that Comeaux did not knowingly participate in Stanford's Ponzi scheme.

There is no doubt that Allen Stanford's conduct is even more egregious than Comeaux's. Otherwise, perhaps Comeaux would have been criminally prosecuted and sentenced to a lengthy prison sentence. The fact that others may have committed worse conduct (and appropriately been subjected to even harsher, criminal, sanctions) does not mitigate the seriousness of Comeaux's intentional fraudulent acts. If Comeaux's argument is correct, a securities professional that violates the antifraud provisions should not be require to disgorge his ill-gotten gains or pay a civil penalty if he is not criminally indicted and convicted. That is not and never has been the law. Comeaux's attempt to disguise the issue by stressing the actions of Allen Stanford and his core co-conspirators is a classic red-herring.

It is Comeaux's conduct itself that is the proper focus here. Yet Comeaux, even when he does address his own conduct, minimizes it. For example, he states that "[t]he 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 interests." [See Comeaux Resp. at p.22].[3] Despite his efforts, however, Comeaux cannot minimize his actions.

First, even his version of his conduct makes it clear that Comeaux committed egregious misconduct throughout almost a decade with a high degree of *scienter*. Comeaux's false assurances to risk averse investors considering an offshore "CD" that the product was backed by a liquid portfolio and was a safe investment despite knowing that he had no basis to relay such assurances is, even standing alone, particularly harmful conduct.[4] And it is made even worse when compounded by Comeaux's intentional failure to disclose material conflicts of interests related to the SIB CD. In short, the limited actions Comeaux continues to acknowledge, even standing alone, constitute serious misconduct warranting a significant monetary remedy and, at a minimum, full disgorgement of all ill-gotten gains Comeaux obtained as a result of committing those acts.

But it is important to note that Comeaux, other than a passing reference,[5] never addresses the fact that he, along with financial advisers he supervised, both as SGC's President and later as an Executive Director in SGC's headquarters in Houston, provided brochures to investors that falsely assured those investors that SIB maintained a "comprehensive insurance program" that provided

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3 His recitation on pages 2-3 of his Response is similar.

4 See OIP at paragraph 5 (finding that [t]he SIB CD purchasers were often risk-averse investors).

5 See Response at page 8. Even here, in the next paragraph, Comeaux claims that "all of these violations relate to Comeaux's lack of knowledge, unreasonable reliance on others' representations, and failures to disclose." Comeaux, perhaps knowing any attempt would be futile, never even tries to explain how conveying promises that depositor security is provided by a comprehensive insurance program he knows does not exist constitutes only "lack of knowledge, unreasonable reliance on others' representations, and failures to disclose."

"depositor security." And Comeaux, and the FAs he supervised, provided this misleading promise even though they knew the SIB CDs were not insured and the SIB CD were not covered by the "comprehensive insurance program." [OIP at 11-14]. This intentional misrepresentation is particularly egregious here, where the offshore product is referred to as a "certificate of deposit," which naturally raises questions about insurance protection given the commonly understood availability of FDIC insurance protecting domestic certificates of deposits. And Comeaux's silence on this issue speaks volumes.

In this context, Comeaux's complaint that the Division does not address the egregious nature of Comeaux's violation is curious. In truth, his conduct speaks for itself and does not require much elaboration. For roughly a decade, Comeaux's served as a President or member of management of a broker-dealer that received over half of its revenues from the sale of a single product: an offshore "certificate of deposit." It is undisputed that Comeaux knew that the revenue SGC earned from marketing the SIB CD constituted a substantial portion of SGC's overall revenue during his tenure.

Not only did Comeaux not disclose the material conflicts of interest he and SGC had in connection with the SIB CD, he sold this "CD" as a safe investment and promised investors – who were often risk averse – that "depositor security" was provided by a "comprehensive insurance program" that he knew did not exist. He also blithely assured investors – despite his duty to disclose all material facts and to employ care to avoid misleading them – that the SIB CD was backed by a liquid portfolio even though he knew he could not obtain any verification of that

promise and without telling them he did not know such information. As a result of these efforts, SGC financial advisers sold billions of dollars in SIB CDs. And, Comeaux himself earned handsome profits.[6]

Comeaux cannot seriously dispute the serious harm his conduct caused investors who believed his representations. And while the Division agrees that it has not alleged Comeaux knowingly participated in the Stanford Ponzi scheme, it is not unreasonable to ask whether much of the harm that has befallen investors (even beyond those who interacted directly with him or persons he directly supervised) could have been avoided if Comeaux had refused to commit his fraudulent acts beginning in 1998 while he was President of SGC – the only broker-dealer that sold the SIB CD in the United States – or at any point during the time he served as an Executive of the broker-dealer.

It is clear that Comeaux's conduct warrants significant monetary penalties, particularly given the significant unjust enrichment Comeaux has obtained.[7] To allow Comeaux to engage in misconduct of this scope resulting in tragic consequences and to merely admit it when caught and

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[6] It is undisputed that Comeaux received at least $1.3 million in commissions, but as discussed below, it is beyond dispute that his actual commissions were much higher. As explained by the Receiver's forensic accountant, the data available as a result of SGC being placed in receivership is limited to 2005 forward. Clearly Comeaux earned commissions and other compensation prior to that time, but those numbers could not be included in the calculation.

[7] Comeaux also suggest that the fact that some of his assets were frozen in a separate lawsuit means that the public interest does not call for appropriate monetary relief. To the contrary, those assets are frozen as a result of a preliminary injunction the Receiver obtained in a lawsuit to recover fraudulent transfers Stanford made to former employees, including Comeaux. The former employees appealed that and it was upheld by the Fifth Circuit. To date that lawsuit, including the Receiver's claims, is pending. Other than as provided in the OIP, that preliminary injunction should have no impact here. Similarly, the fact that certain assets were subject to a preliminary injunction in another lawsuit does not mean that Comeaux should not be required to pay prejudgment interest. First, the assets were secured after his misconduct, whereas Comeaux had the benefit of his ill-gotten gains until SGC was placed in receivership in 2009.

agree to exit the industry without requiring him to pay a third-tier civil penalty and disgorgement, plus prejudgment interest, is not in the public interest.[8]

B. The Division has provided a reasonable approximation of Comeaux's ill-gotten gains, which Comeaux has not rebutted.

Without offering any relevant evidence of his own, Comeaux complains that there is insufficient evidence of his ill-gotten gains. For example, he appears to believe it was necessary for the Receiver's forensic accountant to include copies of every receipt, wire transfer, or payroll record related to Comeaux's compensation and related gains.[9] [See Response at p. 18 "The Van Tassel Declaration fails to attach, or reference, the actual data its calculations are based on."] To the contrary, Ms. Van Tassel set out in detail in her declaration the methodology and sources of the numbers she provided in summary format. And Comeaux has pointed to no reason suggesting she and the staff working under her direction were incapable of reviewing that data and reporting a summary to the Court.[10]

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[8] Comeaux relies heavily on his "cooperation." The Division recognizes that Comeaux has admitted to liability and complied with the terms of the resulting OIP. But after-the-fact admissions and responding to appropriate questions is not "extensive" cooperation that should minimize otherwise appropriate remedies. For example, in the *Justin F. Flicken* matter Comeaux relies on, the court specifically noted cases involving violations of the antifraud provisions require more severe remedies. Moreover, that case and others Comeaux cites merely suggest that a lower bar than otherwise might be justified can be supported if in the context of a settlement. They do not suggest that a respondent should avoid a proper monetary remedy (particularly disgorgement) merely because they have agreed to exit the industry. In this case, there is no settlement on the proper monetary relief.

[9] Comeaux suggests that Ms. Van Tassel no longer works on behalf of the Receiver. [See Response at p. 19]. It is unclear why he thinks that. She merely changed firms and used the past tense of verbs to describe actions she took before she drafted the declaration. But in any event, Comeaux does not offer any reason why it would matter or otherwise case doubt on her testimony.

[10] Comeaux suggests that Ms. Van Tassel and her staff should be credited for the forensic accounting necessary to provide detailed analysis demonstrating that Stanford operated a Ponzi scheme, but should not be credited with being able to accurately report payments to Comeaux as reflected in SGC's records. He offers no reason why her analysis of one is reliable but the other is not.

The Van Tassel Declaration (and its supporting exhibits) and the facts deemed true as set out in the OIP demonstrate that all payments Comeaux received were ill-gotten gains because his fraud had the effect of furthering the fraudulent sale of SIB CDs on which SGC depended. As set out by the Receiver's forensic accountant, without the sale of SIB CDs, SGC would have been insolvent and, consequently, Comeaux would have received none of the payments set out in the supporting declaration. As a result, he should be required to disgorge those receipts.

This is true with regard to all of the payments he received. But it is even more true with regard to his commission payments and to his bonuses that were connected to the sale of the SIB CD.[11]

To avoid this result, Comeaux points to several alleged discrepancies in the Van Tassel declaration and argues that those alleged discrepancies mean all the information should be disregarded. This is wrong both because he has not demonstrated there is any discrepancy and, even if there are minor details incorrect with Van Tassel's analysis, that is no reason to disregard the remaining testimony.

First, Comeaux claims that, because his "wages" listed on his W2s for 2005-2009 time period differs from the total set out in Van Tassel's Declaration, the Declaration is unreliable. But that is a misrepresentation of the Declaration. The Declaration states that Comeaux received transfers of at least $7.4 million in total from SGC during the 2005-2009 time period. Perhaps not all of those payments were "wages" for purposes of tax purposes. It is not necessary that a

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[11] Comeaux argues that only $917,000 of his roughly $1.8 million in bonuses related explicitly to the sale of SIB CDs. [See Response at p. 24]. For the reasons set out above, in the Van Tassel Declaration, and in the Division's initial memorandum, Comeaux should be required to disgorge all of his bonuses because of the central role marketing the SIB CD played at SGC. At a minimum, however, Comeaux should be required to disgorge the $917,000 in bonuses he received in addition to his commissions and salary.

payment to Comeaux be a "wage" for tax purposes to constitute ill-gotten gains, even if such receipts were reimbursement of business expenses. A wrong-doer cannot offset his disgorgement award with associated expenses. *See, e.g., SEC v. Hughes Cap. Corp.*, 917. F. Supp. 1080, 1087 (D.N.J. 1996 (refusing to offset disgorgement by certain "legitimate" business expenses and noting that the overwhelming weight of authority holds that securities law violators may not offset their disgorgement liability with business expenses); *SEC v. Dimensional Entertainment Corp.*, 493 F. Supp. 1270 (S.D.N.Y. 1980) (defendant's expenses in conducting wrongdoing are not legitimate deductions).[12]

Second, Comeaux entirely ignores the reality that, because of resource limitations and the reality of the receivership resulting from the fraud related to SGC's marketing of the SIB CD, the Receiver is unable at this time to provide evidence related to Comeaux's income at SGC before 2005. This is precisely the sort of uncertainty and difficulty that Courts consider in determining that only a reasonable approximation of a defendant's ill-gotten gains is necessary. And, in any event, Comeaux's receipts are, if anything, understated, not overstated.

Finally, even if there are discrepancies on selected items (which Comeaux has not demonstrated), the remainder of the Declaration provides, at a minimum, a reasonable approximation of Comeaux's ill-gotten gains, as set forth in the Declaration and its supporting exhibits and in the Division's initial memorandum.[13]

[12] Alternatively, Comeaux should be required to disgorge the gains he admits to in his tax returns.

[13] For example, Comeaux makes much of an alleged double-counting of $289,010 that he says was paid to him as an upfront loan and considered compensation. He offers only his unsupported statement to make that claim, not any supporting evidence. Also, it is important to note that he admits it was received by him as compensation and was not repaid. Therefore, at most, the total in the Division's initial memorandum should be offset by only $289,010.

C. Comeaux should be required to pay a significant monetary penalty.

Comeaux argues that he should not be required to pay a third-tier penalty because there is no evidence "whatsoever of any losses to persons as a result of Comeaux's violations" and because some of his assets have been subjected to a preliminary injunction in a separate lawsuit by the Receiver. Neither argument has any merit.

First, Comeaux's suggestion that there is no evidence of harm is surprising. The Declarations submitted outline the staggering shortfall in assets available to compensate victims who were misled into investing in the SIB CD. To satisfy the necessity of imposing a third-tier penalty, it is not necessary to tie individual investors' losses to specific actions by Comeaux. To put it bluntly, Comeaux was the President of SGC for over five years in which he knew a substantial portion of SGC's revenue was based on the SIB CD. If at any time during those years (or afterwards for that matter), Comeaux had not committed his violations these substantial losses may have been avoided. At any rate, it is clear that the evidence establishes that Comeaux's conduct created a "significant risk of substantial losses," and Comeaux does not even dispute that.

Likewise, the fact that the Receiver obtained a preliminary injunction in a separate lawsuit Comeaux continues to defend has no bearing at all on the propriety of holding him liable to pay a monetary penalty.

Comeaux has offered no reason why his long-standing campaign of making material misrepresentations and omissions to investors (and supervising others who did also) should not result in a sizable third-tier penalty.

D. Comeaux's financial condition does not preclude the Division's requested monetary relief.

Comeaux states, without much elaboration, that his financial condition precludes any additional relief in this matter. But, even assuming that the Court decides to exercise its discretion and consider Comeaux's financial condition, his financial condition should not impact the appropriate award. According to his financial statement, Comeaux has a net worth of more than $1.4 million, including a house he values at $500,000 not subject to any mortgage liability. He also has over $740,000 in securities.[14] Finally, his financial statement does not include the assets subject to the Receiver's preliminary injunction valued at over $1.4 million. While Comeaux may ultimately lose those assets as a result of the Receiver's lawsuit, there is no reason those assets (which will be credited against an award here) should not be considered in evaluating his overall financial condition. In short, Comeaux has not presented any evidence of hardship or unique considerations related to his financial condition that should cause the Court to spare him an otherwise appropriate remedy.[15]

Conclusion

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, subject to the provisions of Section V of the OIP.

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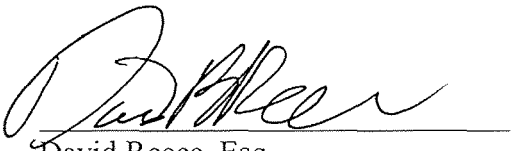
[14] Comeaux states, without citation or argument, that certain of his assets are subject to state law exemptions. But those exemptions would not prevent those assets from being used to pay a judgment in this case and should not be used to exclude those assets when considering Comeaux's financial condition. *See, e.g., SEC v. Huffman*, 996 F.2d 800, 802-803 (5th Cir. 1993) (defendants could not avoid disgorgement judgment by using state law exemptions under Federal Debt Collections Procedures Act); *SEC v. AMX, Int'l, Inc.*, 872 F. Supp. 1541-1544-45 (N.D. Tex. 1994) (homestead exemption not taken into account).

Dated: May 13, 2013

Respectfully submitted,



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[15] It is irrelevant that his claimed (but virtually unsupported) net worth may be lower than the appropriate financial remedy.