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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15002

In the Matter of **JAY T. COMEAUX,** **Respondent.**	**DIVISION OF ENFORCEMENT'S BRIEF IN OPPOSITION TO JAY T. COMEAUX'S PETITION FOR REVIEW OF INITIAL DECISION**

Dated: November 6, 2013

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

The Division of Enforcement responds to Respondent Jay Comeaux's Brief in Support of his Petition for Review of the Initial Decision issued by the Administrative Law Judge ("ALJ") on July 2, 2013, that required him to disgorge his ill-gotten gains but declined to award any monetary civil penalty. For the reasons discussed below, the ALJ's decision to require Comeaux to pay disgorgement in the amount of $3,386,974.50, offset by assets subject to a freeze in separate litigation, plus prejudgment interest, is more than supported by the record. In reaching that conclusion, the ALJ noted evidence provided by a forensic accountant working on behalf of a Receiver appointed and overseen by a federal district court to step into the shoes of the management of Comeaux's former employer, Stanford Group Company. While Comeaux offers irrelevant quibbles concerning that evidence, he has not, because he cannot, show that this evidence did not provide a reasonable approximation of his ill-gotten gains. Indeed, for the reasons explained in the Division's motion for summary disposition and reply in support of that motion, Comeaux's disgorgement liability could actually be increased.[1]

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[1] As demonstrated in those pleadings, which are incorporated herein, all funds Comeaux received during his tenure at Stanford Group Company were causally related to his fraudulent activities. Moreover, as explained in those pleadings, because of difficulties inherent in working with records of entities placed in receivership, it was not possible to present evidence of Comeaux's ill-gotten gains prior to 2005. In short, the amount ordered by the ALJ was, if anything, understated. At the very least, therefore, the Commission should affirm the ALJ's disgorgement award.

Indeed, not only should the Commission affirm that award, it should, in its discretion and upon *de novo* review, require Comeaux to pay a civil penalty. As explained in the Division's motion for summary disposition and reply in support of that motion, requiring Comeaux to pay a civil penalty is in the public interest.

I
PROCEDURAL BACKGROUND

A. The OIP established Comeaux's liability and set limited remedies.

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 ("Securities 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) 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 Comeaux.

As a result of an Offer of Settlement, the OIP ordered that: Comeaux shall cease and desist from committing or causing any violations and any future violations of Section 17(a) 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. Among other relief, the OIP also: barred Comeaux from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization; and prohibited 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.

B. The OIP provided for further proceedings to determine an appropriate financial remedy.

The OIP also provided that additional proceedings would be conducted to determine what, if any, disgorgement and civil penalties against Comeaux is in the public interest. Importantly, in connection with those proceedings (and therefore in this appeal), Comeaux is precluded from arguing he did not violate the federal securities laws described in the OIP and, for purposes of those

additional proceedings, the allegations of the OIP are deemed true. [See OIP at Section V.]. Because the OIP provided that the proper financial remedy would be determined on the basis of affidavits, declarations, excerpts from sworn deposition or investigative testimony, and documentary evidence, the parties subsequently agreed to resolve this remaining issue through written submissions. [*See* Id.; .Prehearing Order entered October 22, 2012, Jay T. Comeaux, Admin. Proc. 2 No. 3-15002 (A.L.J. Oct. 22, 2012) (unpublished)].

C. The Initial Decision awarded disgorgement, plus prejudgment interest, but declined to award a civil penalty.

On July 2, 2013, the ALJ issued her Initial Decision. In the Initial Decision, the ALJ concluded that Comeaux's misconduct unjustly enriched him by $3,386,974.50, the amount of ill-gotten gains that were, according to the ALJ, causally related to his misconduct. As the ALJ properly noted, this sum includes reasonable approximations of payroll compensation, commissions, and bonuses directly related to the sale certificates of deposit issued by Stanford International Bank by Comeaux and others at his direction. [Initial Decision at 4]. The ALJ further awarded prejudgment interest, to be calculated from March 1, 2009, even though Comeaux had the benefit of his ill-gotten gains for years before that time. [See Id.].[2]

In addition, the Initial Decision off-set that disgorgement amount by the value of assets that were under the control of the court-appointed Receiver as part of separate, unrelated litigation initiated by the Receiver against Comeaux and other former Stanford Group Company

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[2] Comeaux's brief does not explicitly challenge the award of prejudgment interest beyond his general statement that no further sanctions beyond those set out in the OIP should be ordered. For the reasons set out in the Division's prior briefing, which is incorporated herein, and in the Initial Decision, prejudgment interest was properly awarded. Indeed, the Initial Decision appears to have calculated it from March 1, 2009 when in fact an earlier date of at least January 1, 2005 could have been used.

employees. The parties agreed in the proceeding below that the value of those assets is $1,435,236.00.

Finally, the ALJ concluded that the public interest did not require the imposition of a civil money penalty.

Comeaux filed a Motion to Correct a Manifest Error of Fact on July 12, 2013, claiming that the Initial Decision wrongly found that Comeaux "does have the financial ability to pay disgorgement plus prejudgment interest." The ALJ denied that motion on July 23, 2013. This petition for review followed.

II.
STANDARD OF REVIEW

Rule 411(a) of the Commission's Rules of Practice authorizes the Commission to "affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and make any findings or conclusions that in its judgment are proper on the basis of the record." The Commission's review of the Initial Decision is *de novo*. See *Richmark Capital Corp.*, 81 SEC Docket 1715 (November 7, 2003).

III.
FACTUAL BACKGROUND[3]

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

[3] Unless otherwise noted, the facts set out in this factual background 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 Comeaux. *See generally*, OIP at Section V.

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 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 ("KVT Declaration"), paragraph 8]

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. [KVT 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."

IV.
ARGUMENT

A. Comeaux's alleged financial condition and his partial settlement are not a basis to challenge the Initial Decision.

Comeaux's primary argument on appeal concerns his complaint that he can't afford to pay a disgorgement award. [See Brief in Support of Petition for Review at 6-10]. As a threshold matter, Comeaux is misusing the ability to present evidence of his financial condition, suggesting that if somehow he demonstrates that his net worth is less than a judgment, the judgment is improper. That argument, even if all his factual recitations are taken at face value –

which they should not be – is wrong. It is well-established that, while a Respondent's ability to pay may be considered, it is only one factor. Moreover, even considering the ability to pay is discretionary, and where, as here, the conduct is egregious, it may be disregarded. *See, e.g., In the Matter of Johnny Clifton,* Release No. 9417, Exchange Act Release No. 69982, Release No. 33-9417, Release No. 34-69982, 2013 WL 3487076 at n.116 (July 12, 2013); *Gregory O. Trautman*, Exchange Act Rel. No. 61167A, 2009 WL 6761741, at *24 (Dec. 15, 2009). For this reason alone, it should be disregarded.

Likewise, Comeaux's complaint that requiring him to disgorge his ill-gotten gains poses an undue hardship should be rejected. As the Commission has recognized: "[H]ow a respondent collaterally suffers as a result of the violation, or from the disciplinary proceeding that followed (*e.g.*, that he lost money, the amount of time he was out of the industry, or the impact the disciplinary proceeding had on his reputation, career, or finances), is not a mitigating factor. *Johnny Clifton*, Exchange Act Rel. No. 69982, at fn. 116, 2013 WL 3487076 (July 12, 2013) (rejecting a respondent's argument that "[h]e has a family including a wife and children," and "[h]e will not be able to take care of his family and pay the hefty penalty assessed over and beyond his removal from the industry."); *see also Janet Gurley Katz*, Exchange Act Rel. No. 61449, 2010 WL 358737, at *26 & n.66 (Feb. 1, 2010), *aff'd*, 647 F.3d 1156 (D.C. Cir. 2011); *Ashton Noshir Gowadia,* Exchange Act Rel. No. 40410, 53 SEC 786, 1998 WL 564575, at *4 (Sept. 8, 1998).[4]

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[4] It is worth noting that under the Initial Decision, Comeaux is not required to pay a civil monetary penalty. Given his fraudulent conduct and the substantial harm to investors, his continued effort to keep the profits he obtained from the latter part of his fraud undercuts his repeated claim to have fully accepted the reality of his conduct.

Comeaux's attempts to minimize his assets by seeking to misapply the law related to exempt assets should also be rejected.[5] Comeaux claims only that two of his listed assets are "subject to Homestead exemption" and "subject to IRA exemption." [*See* Brief in Support of Petition at 7 "when Comeaux's homestead and IRAs" are ... excluded; Respondent's Response to Motion for Summary Disposition [Doc. No. 11]]. But those state law exemptions cannot bar enforcement of a federal judgment.[6] An award of disgorgement does not fall within the Federal Debt Collection Procedures Act, which incorporates some state law exemptions. *See e.g., SEC v. Huffman*, 996 F2d 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

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5 Comeaux also incorrectly states that "[t]he uncontroverted evidence demonstrates that Comeaux's total net worth, including his wife's separate property, their home, and his individual retirement accounts ("IRA's") amounts to a total of $1,424,951.39." [See Brief in Support of Petition for Review at 7]. To the contrary, that amount ignores his assets valued at roughly $1.4 million that are currently under the control of the Receiver. The Division (and the OIP) recognizes that those assets are currently subjected to a preliminary injunction obtained by the Receiver in a fraudulent transfer action. 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 those assets when considering Comeaux's financial condition generally for purposes of evaluating his financial condition. 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."

6 In his brief, Comeaux discusses federal bankruptcy laws and ERISA. But he did not present any evidence related to any bankruptcy or ERISA-related assets in the proceeding. As noted above, the evidence he did submit indicated that he has assets in an IRA and in the form of real estate.

into account because allowing a defendant to walk away from a disgorgement order would, in effect, render the disgorgement order and the SEC's enforcement powers meaningless). Indeed, courts have flatly refused to consider state exemptions in this circumstance. *See SEC v. Musella*, 818 F. Supp. 600 (S.D.N.Y. 1993).

And, even in the unlikely event that these exemptions ultimately shield assets from any collection efforts, they are irrelevant to the question of whether the Court should order disgorgement. As noted above, Comeaux has not demonstrated he has no other source of financial support; nor has he (because he of course cannot) precluded the possibility of some future financial gain or windfall. Those considerations further support the Court's disgorgement judgment.

Finally, even though the ALJ declined to require him to pay a civil penalty for his fraud, Comeaux suggests that he should be able to keep his fraudulently-obtained earnings because of what he describes as his "cooperation."[7] As it did below, 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

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[7] Comeaux relies extensively on press releases related to a cooperation program announced in 2010, that has no application here. [See Brief in Support of Petition for Review at 10-13]. Comeaux's "cooperation" was limited only to the actions explicitly required by the OIP.

Likewise, his reliance on the "Hedges Affidavit" and complaint that the ALJ did not admit it into evidence is misplaced. The Hedges Affidavit is largely irrelevant to the issues presented here. For example, Comeaux cites to it to suggest he should be credited with not violating the express terms of his settlement because he has not taken any public action denying the OIP. That is not the type of "cooperation" that raises any policy concerns. In any event, as discussed above, Comeaux's "cooperation" is wholly irrelevant to whether he should be allowed to retain the fruits of his fraudulent conduct. Finally, it is irrelevant that other former Stanford Group Company executives were subjected to lower financial remedies because they earned less ill-gotten gains. Those executives, like Comeaux, were ordered to disgorge their ill-gotten gains. And those executives, unlike Comeaux, were ordered to pay civil monetary penalties.

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.

B. The ALJ properly held that Comeaux should be required to disgorge his ill-gotten gains, plus pre-judgment interest, and her calculation, if anything, was understated.

1. Disgorgement is a proper remedy here.

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.

2. The ALJ could have properly imposed a higher disgorgement liability.

Notably, the ALJ did not award the full amount of proper disgorgement. Here, a forensic accountant working for the Receiver appointed over SGC 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 KVT 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).

3. The disgorgement award ordered is fully supported by the evidence.

The ALJ declined to award this full amount. Instead, the ALJ focused on the evidence concerning only those payments Comeaux received that were directly related to his fraudulent conduct. The Receiver's forensic accountant specified that available records confirmed 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.[8] *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).[9]

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[8] In evaluating the evidence related to the compensation and other payments Comeaux received in this matter, the Division asks that the Commission 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 provided 'clear, numerical support for the creative reverse engineering undertaken' by the Ponzi scheme and specifically itemized the assets and returns of the company.").

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

And contrary to Comeaux's suggestions, the Receiver's forensic accountant fully explained how she determined those numbers. For example, she explained that she and her staff had reviewed Stanford Group Company's database files that included relevant accounting entries, payroll records, and other business records maintained by Stanford Group Company. And Comeaux has offered no reason at all to suggest that the Receiver's forensic accountant's testimony was untruthful or materially inaccurate.[10] In short, 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.[11]

V.
CONCLUSION

For the reasons set forth above, the Division respectfully requests that the Commission, at a minimum, affirm the Initial Decision.[12]

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[10] In a bolded sentence, Comeaux states that "The Division provided no evidence, and the ALJ was without evidence to determine, that Comeaux's non-SIB CD commission compensation was in any way casually connected to his violations." [Brief in Support of Petition at 17]. But, as noted above, the ALJ did not require him to repay non-SIB CD commissions. Instead, he was required to repay those funds that were directly connected to sales of the SIB CD, either by him directly or those acting at his direction. And in any event, the Division introduced evidence that demonstrates that all money SGC paid to Comeaux was only possible because of, and therefore causally related to, his fraud.

[11] Comeaux focuses, for example, on what he describes as the double counting of upfront loans of $289,010.00. But as noted elsewhere, the ALJ did not rely on that sum to calculate Comeaux's disgorgement award because that sum was not included in the calculation of the amounts received directly related to and based only on the sale of the SIB CDs. [See, for example, KVT Dec. at paragraph 11]. And even if were relevant, this alleged error does not change the fact that the forensic accountant's work overall provides a reasonable approximation of Comeaux's ill-gotten gains.

[12] The Division does not agree with all of the ALJ's decision. And, as noted the Division believes it would be appropriate to both increase the amount of disgorgement liability and require

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Comeaux to pay a third-tier civil penalty. At a minimum, however, the Initial Decision should be affirmed.