HARD COPY

RECEIVED
JAN 12 2016
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16353

In the Matter of

SPRING HILL CAPITAL MARKETS, LLC,
SPRING HILL CAPITAL PARTNERS, LLC,
SPRING HILL CAPITAL HOLDINGS, LLC, and
KEVIN D. WHITE

Respondents.

THE DIVISION OF ENFORCEMENT'S CROSS-PETITION FOR REVIEW

Nicholas A. Pilgrim
Senior Trial Counsel
Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street
New York, NY 10281
Tel. (212) 336-0924
pilgrimn@sec.gov

Daniel Loss
Counsel
Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey Street
New York, NY 10281-1022
Tel. (212) 336-9134
lossd@sec.gov

Attorneys for the Division of Enforcement

Pursuant to the Commission's Rule of Practice 410(b), the Division of Enforcement ("Division") hereby cross-petitions the Commission for review of the Initial Decision issued by Administrative Law Judge Carol Fox Foelak on November 30, 2015 (hereinafter "the Initial Decision"). The Division seeks review under Rule of Practice 411(b)(2)(ii)(C) of the remedial relief imposed against Respondent Kevin D. White ("White") pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and of the civil penalties imposed against Spring Hill Capital Markets, LLC ("SHCM"), Spring Hill Capital Partners, LLC ("SHCP"), and Spring Hill Capital Holdings, LLC ("SHCH") (collectively, the "Respondent Entities") and White (together with the Respondent Entities, "Respondents").

BACKGROUND

The proceedings instituted against the Respondents involve multiple securities law violations, including unregistered broker-dealer activity and various net capital, reporting and record-keeping violations.[1] During the administrative proceeding held in this matter, the Division established that over a 10-month period, respondent SHCP earned approximately $4 million in transaction-based compensation by operating as an unregistered broker-dealer at the direction of its CEO and founder, Kevin White. Initial Decision at 8. Although White, a former managing director at Lehman Brothers, knew that a broker-dealer had to be registered to operate lawfully, he operated SHCP without registration because he was eager to generate revenue for his start-up business and knew that registration would be a "lengthy process." *Id.* at 6-8, 15.

[1] The Initial Decision found that (1) SHCP willfully violated Exchange Act Section 15(a); and White and SHCH, a holding company majority owned by White which had the full and exclusive right and authority to manage SHCP and SHCM, willfully aided and abetted and caused SHCP's violation; and (2) SHCM willfully violated Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-1, 17a-3(a)(1) and 17a-11(b)(1); and White and SHCH caused SHCM's violations of Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-1 and 17a-11(b). Initial Decision at 12-13. White and SHCH also stipulated to willfully aiding and abetting and causing a violation of Exchange Act Section 17(a) and Rule 17a-3(a)(1) by an unaffiliated broker-dealer through which SHCM introduced trades). *Id.* at 2.

Hoping to have his cake and eat it too, at the same time that White benefited from the illicit revenue SHCP earned by brokering bond transactions on behalf of clients, he sought to register an affiliated entity that he created, respondent SHCM, to conduct an identical business. During the course of SHCM's registration process, White and his employees intentionally deceived the Financial Industry Regulatory Authority ("FINRA") by falsely representing that SHCP, which had provided SHCM with funding to satisfy its initial net capital requirement, "does not conduct a security business" but instead merely provided its clients with "consulting" services. *Id.* at 9.

FINRA, misled as to the true nature of SHCP's business activities, authorized SHCM to commence operations as of March 4, 2010. *Id.* at 5. Immediately after SHCM became registered, it took over SHCP's broker-dealer activities and SHCP ceased operations. *Id.* Shortly after its registration, SHCM committed a net capital violation and multiple reporting and record-keeping violations in connection with a series of trades with which White was heavily involved. During these transactions, White twice authorized the purchase of a bond despite knowing that SHCM did not have sufficient net capital for the purchases because he hoped a prospective seller would ultimately buy the bond from his firm at a much higher price. *Id.* at 10-11. White's conduct with respect to these trades also resulted in a record-keeping violation by an unaffiliated broker-dealer through which SHCP/SHCM introduced their trades because the Respondents misled that broker-dealer by withholding a trade ticket for ten days and doctored their trade blotter to conceal the actual dates of the bond purchases. *Id.* at 10-11, 16-17.

Based on the clear pattern of wrongdoing presented at trial, Judge Foelak found that Respondents' conduct was "egregious and recurrent" and reflected, among other things, a "flouting of the requirement that a broker-dealer be licensed." *Id.* at 19. Judge Foelak further found that White willfully aided and abetted and caused SHCP's violations of Section 15(a) of

the Exchange Act and the unaffiliated broker-dealer's violation of Section 17(a) of the Exchange Act and Rule 17a-3(a)(1) thereunder and that White also caused SHCM's violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1 and 17a-11(b)(1) thereunder. *Id.* at 12-13. The Initial Decision imposed cease-and-desist orders, ordered disgorgement of $3,953,608 plus prejudgment interest, ordered civil penalties totaling $82,500 and censured SHCM and White as remedial relief pursuant to Section 15(b) of the Exchange Act. *Id.* at 1, 18.

ARGUMENT

The Division seeks review of the imposition of a censure against White and the civil penalty amounts imposed against White and the Respondent Entities. While the law judge correctly found that remedial relief pursuant to Section 15(b) of the Exchange Act and civil penalties pursuant to Section 21B of the Exchange Act were in the public interest, the Division respectfully submits that the lack of a suspension or bar with respect to White and the amount of the penalties imposed are inappropriate in light of the extent of the Respondents' willful misconduct, the need to deter such misconduct, the degree of scienter involved, the risk of future securities law violations, and White's failure to recognize the wrongfulness of his conduct. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979).

In the Initial Decision, Judge Foelak found that, based on the testimony and exhibits presented at trial, White and the Respondent Entities: 1) engaged in "egregious and recurrent [conduct] over a period of ten months"; 2) "flout[ed]" regulatory requirements and were "at least reckless"; 3) "have not affirmatively recognized the wrongful nature of their conduct"; 4) failed to "give[] assurances against future violations" of the securities laws; and 5) would have an "opportunity for future violations." *Id.* at 19. As evidence of White's "reckless disregard" of the requirement that broker-dealers be licensed and his awareness that SHCP's business was "not

a . . . legitimate method of speeding up Spring Hill's entry into the securities business," Judge Foelak cited White's complicity in "disguise[ing] the commission payments that SHCP received as consulting payments" and in his firm falsely "represent[ing] to FINRA that SHCP was not conducting a securities business." *Id.* at 15. In addition, Judge Foelak found that the Respondents had also misrepresented SHCP's revenues "as for 'consulting,' not as 'commissions'" in response to an inquiry from the Commission's Office of Compliance and Inspections ("OCIE"), even though the Respondents had described the exact same revenues as "commission income" to their accountant. *Id.* at 9.

In light of the law judge's findings and White's repeated efforts to deceive both FINRA and the Commission, a censure is insufficiently protective of the public interest. By engaging in egregious misconduct (*Id.* at 19), White has shown himself unfit to participate in the securities industry; and by failing to recognize the wrongfulness of his actions and providing no assurances that he will not engage in the same or similar conduct, White, who willfully and deliberately violated multiple securities laws, poses a high risk of committing future violations.

Judge Foelak imposed only a censure principally on the basis that White's conduct did not involve a "violation of the antifraud provisions" of the federal securities laws. *Id.* at 22. Judge Foelak noted that "no Commission opinion in a litigated administrative proceeding has imposed a bar on a respondent solely for operating as an unregistered broker-dealer." *Id.* Yet, numerous litigated actions have involved the imposition of a suspension or bar for violations of Section 15(a) of the Exchange Act, where the respondent has not also violated the antifraud provisions. *See, e.g.*, *Khaled A. Eldaher*, Exch. Act Rel. No. 76132, 2015 SEC LEXIS 4183 (Oct. 13, 2015) (declining to review law judge's imposition of six-month suspension); *Kenneth C. Meissner*, Initial Decision Rel. No. 850, 2015 SEC LEXIS 3166 (Aug. 4, 2015) (ordering

bar); *Centreinvest, Inc.*, Initial Decision Rel. No. 387, 2009 SEC LEXIS 2966 (Aug. 31, 2009) (ordering bar). The Commission itself has also upheld suspensions imposed by SROs for unregistered broker-dealer conduct and other non-fraud violations on multiple occasions. *See, e.g.*, *Eugene T. Ichinose, Jr.*, Exch. Act Rel. No. 17381, 1980 SEC LEXIS 105 (Dec. 16, 1980) (Commission opinion) (upholding suspension from association with any NASD member firm despite expressly making "no finding of fraud"); *Roth v. SEC*, 22 F.3d 1108 (D.C. Cir. 1994) (denying petition for review of Commission order upholding NASD-imposed six-month suspension for unregistered broker-dealer conduct).

In *Eldaher*, the law judge imposed a six-month suspension for unregistered broker-dealer violations that the judge did "not characterize . . . as egregious" and which involved only a "small number of transactions" for which the respondent "expressed remorse." *Khaled A. Eldaher*, Initial Decision Rel. No. 857, 2015 SEC LEXIS 3360, at *28 (Aug. 17, 2015). By contrast, here, Judge Foelak found that White's conduct was "egregious and recurrent" and involved receipt by his firm of nearly $4 million in illegal commissions through 95 securities transactions over a ten-month period. Initial Decision at 8, 19.

In declining to order a suspension or bar against White, the law judge cited two cases in which a respondent was suspended or barred for conduct that did not involve fraud but which was even more "harmful to the markets than White's conduct." *Id.* at 23. However, the Commission has recognized that the broker-dealer registration requirement serves as the "keystone of the entire system of broker-dealer regulation" and that unregistered broker-dealer activity "deprive[s] the public of protection [to which] it is entitled." *Eugene T. Ichinose, Jr.*, Exch. Act Rel. No. 17381, 1980 SEC LEXIS 105, at *15. *See also Centreinvest, Inc.*, Initial Decision Rel. No. 387, 2009 SEC LEXIS 2966, at *29-32 (imposing bar for Section 15(a)

violations despite absence of "evidence of harm to specific investors"). Moreover, the Commission has "consistently . . . held that the appropriateness of the sanctions imposed . . . cannot be determined precisely by comparison with action taken in other cases" and instead "depends on the facts and circumstances of the particular case." *Dennis S. Kaminski*, Exch. Act Rel. No. 65347, 2011 SEC LEXIS 3225, at *41 (Sept. 16, 2011) (Commission opinion).

The pertinent facts and circumstances in this case include the law judge's findings that White: (1) committed "egregious and recurrent" violations of Section 15(a); (2) acted with "reckless disregard" of broker-dealer regulatory requirements; (3) was complicit in his firm's disguising business activities and sources of income in representations to FINRA and the Commission; (4) willfully aided and abetted and/or caused multiple "serious" violations of record-keeping, net capital, and reporting provisions of the securities laws, in addition to operating an unregistered broker-dealer; (5) has failed to recognize the wrongful nature of his conduct; (6) has given no assurances against future violations; and (7) has an opportunity because of his occupation to commit future violations. Initial Decision at 9, 15, 19, 21. These findings, combined with the need to deter other industry professionals from engaging in similar deliberate misconduct, merit a bar or, at minimum, a suspension in light of Commission precedent and the *Steadman* factors.

For the aforementioned reasons, the Division respectfully requests that the Commission impose a bar on White or, in the alternative, impose a suspension of sufficient length to effectuate the remedial purpose of Section 15(b) of the Exchange Act and protect the public interest. For similar reasons, and consistent with the factors set out in *Steadman*, the Division respectfully submits that the Respondents should be ordered to pay the statutory maximum amount of civil penalties in light of the egregious and recurring nature of the misconduct.

Dated: January 11, 2016

Respectfully submitted,

Nicholas Pilgrim
Daniel Loss
Attorneys for the Division of Enforcement

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16353

In the Matter of :

SPRING HILL CAPITAL MARKETS, LLC, :
SPRING HILL CAPITAL PARTNERS, LLC, :
SPRING HILL CAPITAL HOLDINGS, LLC, :
and KEVIN D. WHITE, :

Respondents. :

CERTIFICATE OF SERVICE

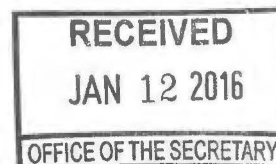
I certify that on January 11, 2016, I have served the Division of Enforcement's Petition for Review by electronic mail on the following:

Brent J. Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 3628
Washington, D.C. 20549

The Honorable Carol Fox Foelak
Administrative Law Judge
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 20549
alj@sec.gov

Ronald W. Dunbar, Jr., Esq.
Dunbar Law PC
197 Portland Street
Boston, MA 02114
Counsel for Respondents
dunbar@dunbarlawpc.com

Daniel Loss



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT DIAL LINE
(212) 336-9134
LossD@sec.gov

January 11, 2016

Via Fax and UPS

Brent Fields, Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
FAX: 202-772-9324

Re: In the Matter of Spring Hill Capital Markets, LLC, Admin. File No. 3-16353

Dear Mr. Fields:

Please find enclosed an original and three copies of the Division of Enforcement's Cross-Petition for Review in the above-referenced matter.

Respectfully submitted,

Daniel Loss

cc: Counsel for Respondents (by email)
The Honorable Carol Fox Foelak (by email)