

INITIAL DECISION RELEASE NO. 937  
ADMINISTRATIVE PROCEEDING  
FILE NO. 3-16354

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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In the Matter of

DAVID B. HAVANICH, JR., :  
CARMINE A. DELLASALA, MATTHEW D. WELCH, : INITIAL DECISION  
RICHARD HAMPTON SCURLOCK, III, : AS TO  
RTAG INC. d/b/a RETIREMENT TAX ADVISORY GROUP, : MICHAEL J. SALOVAY  
JOSE F. CARRIO, DENNIS K. KARASIK, : January 4, 2016  
CARRIO, KARASIK & ASSOCIATES, LLP, and :  
MICHAEL J. SALOVAY :

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APPEARANCES: Andrew O. Schiff for the Division of Enforcement,  
Securities and Exchange Commission

Michael J. Salovay, *pro se*

BEFORE: Carol Fox Foelak, Administrative Law Judge

### SUMMARY

This Initial Decision (ID) concludes that no disgorgement or civil penalty will be imposed on Michael J. Salovay due to his inability to pay.

### I. PROCEDURAL BACKGROUND

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on January 23, 2015, 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), and Sections 203(e) and (f) of the Investment Advisers Act of 1940.<sup>1</sup> On September 2, 2015, the Commission issued an order that, pursuant to Michael J. Salovay's offer of settlement, resolved all issues in this proceeding as to him except for the determination of the amount of disgorgement he should be ordered to pay and whether he should be ordered to pay a civil penalty, and, if so, the

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<sup>1</sup> The proceeding has ended as to David B. Havanich, Jr., Carmine A. DellaSala, and Matthew D. Welch. See *David B. Havanich, Jr.*, Securities Act Release Nos. 9791, 9792, 9793; 2015 SEC LEXIS 2144, 2146, 2147 (May 26, 2015).

amount. *David B. Havanich, Jr.*, Exchange Act Release No. 75810, 2015 SEC LEXIS 3634 (Sept. 2, 2015) (Settlement Order). The Settlement Order concluded that Salovay willfully violated Section 15(a) of the Exchange Act<sup>2</sup> and imposed a cease-and-desist order and industry bar on him. Settlement Order at ¶¶ III.I, V. The Commission stated that the outstanding issues may be determined on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence. *Id.* at ¶ IV.(d).

As permitted by the Settlement Order, the determination concerning disgorgement and penalties is being made by means of summary disposition, pursuant to 17 C.F.R. § 201.250. Settlement Order at ¶ IV.(d).<sup>3</sup> This determination is being made through filings that include Salovay’s Form D-A (17 C.F.R. § 209.1). *See David B. Havanich, Jr.*, Admin. Proc. Rulings Release No. 3119, 2015 SEC LEXIS 3730 (A.L.J. Sept. 11, 2015). Accordingly, this ID is based on: (1) the Division of Enforcement’s Motion for Summary Disposition Against Respondent Michael J. Salovay on the Issues of Disgorgement, Prejudgment Interest, and Civil Penalties, filed on September 25, 2015; (2) Salovay’s Response, filed on October 6, 2015; and (3) the Division’s Reply, filed on December 22, 2015.<sup>4</sup> Salovay’s filing was submitted under seal and will be subject to a protective order pursuant to 17 C.F.R. § 201.322.<sup>5</sup>

## II. FINDINGS AND CONCLUSIONS

Salovay received approximately \$101,790 in transaction-based compensation related to the violative conduct found in the Settlement Order.<sup>6</sup> Settlement Order at ¶ III.F.3.c. Section 21C(e) of the Exchange Act authorizes disgorgement of ill-gotten gains from Salovay, who “agree[d] that

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<sup>2</sup> Exchange Act Section 15(a) makes it unlawful for any broker or dealer to effect any transactions in, or to induce or attempt to induce, the purchase or sale of any security, unless such broker or dealer is registered or associated with a registered broker-dealer.

<sup>3</sup> Familiarity with the findings of fact and conclusions of law in the Settlement Order is assumed for the purpose of this ID.

<sup>4</sup> The Division first received Salovay’s filing on December 21, 2015.

<sup>5</sup> Although the record in a public hearing is presumed to be public, the harm resulting from disclosure of Salovay’s financial situation outweighs the benefits. *See* 17 C.F.R. § 201.322(b). Disclosure of financial information concerning an individual is presumed harmful. It is specifically limited in various statutes, for example, Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and the Privacy Act, 5 U.S.C. § 552a. There is no benefit from disclosure in this case.

<sup>6</sup> Salovay takes issue with some of the findings in the Settlement Order. However, he is estopped from challenging the findings in connection with the additional proceedings ordered that are the subject of this ID. “Salovay agrees: (a) he will be precluded from arguing that he did not violate the federal securities laws described in his Offer [of Settlement]; [and] (c) solely for the purposes of such additional proceedings, the allegations of the Offer shall be accepted as and deemed true by the [administrative law judge].” Settlement Order at ¶ IV.(a), (c).

disgorgement is appropriate.” Settlement Order at ¶ IV. Disgorgement of ill-gotten gains is “an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws.” *Montford & Co. v. SEC*, 793 F.3d 76, 84 (D.C. Cir. 2015) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)). “Thus, ‘disgorgement need only be a reasonable approximation of profits causally connected to the violation.’” *Id.*; see *SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); accord *First City Fin. Corp.*, 890 F.2d at 1231-32; *Laurie Jones Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, at \*38 (Apr. 5, 1999) (quoting *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996)), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000). Accordingly, \$101,790 of ill-gotten gains is subject to disgorgement by Salovay. However, Salovay’s liabilities, including debts for unpaid taxes, far exceed his assets, and he has a limited income. Accordingly, he has shown an inability to pay this amount, and, pursuant to 17 C.F.R. § 201.630(a), he will not be ordered to pay disgorgement. Also because of his inability to pay, he will not be ordered to pay a civil penalty. See Section 21B(d) of the Exchange Act;<sup>7</sup> 17 C.F.R. § 201.630(a).<sup>8</sup>

In conclusion, Salovay will not be ordered to pay disgorgement or a civil penalty.

IT IS SO ORDERED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission’s Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111(h) of the Commission’s Rules of Practice, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned’s order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the

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<sup>7</sup> Exchange Act Section 21B authorizes the Commission to impose a civil penalty in a proceeding, such as this one, instituted pursuant to Exchange Act Section 15(b). Section 21B(d) provides:

In any proceeding in which the Commission . . . may impose a penalty under this section, a respondent may present evidence of [his] ability to pay such penalty. The Commission . . . may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person’s ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person’s assets and the amount of such person’s assets.

<sup>8</sup> “The [Administrative Law Judge] may, in . . . her discretion, consider evidence concerning ability to pay in determining whether disgorgement . . . or a penalty is in the public interest.” 17 C.F.R. § 201.630(a).

Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak  
Administrative Law Judge