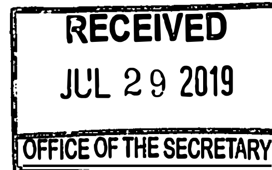
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19145



In the Matter of

Matthew R. Rossi and
SJL Capital, LLC

DIVISION OF ENFORCEMENT'S
REPLY BIREF SUPPORTING SUMMARY DISPOSITION ON CIVIL PENALTIES[1]

The Division of Enforcement ("Division") respectfully requests that the Court impose a third-tier civil penalty of $173,437 against Respondents Matthew R. Rossi and SJL Capital, LLC, jointly and severally, for each of the three federal securities acts they violated – for a total civil penalty of $520,311.

I.

PROCEDURAL BACKGROUND

On March 21, 2019, Respondents submitted a signed Offer of Settlement to the Commission evidencing their consent to the entry of the OIP, which the Commission issued on April 17, 2019.

[1] On July 23, 2019, the Court issued its ruling on the parties' motions for summary disposition. The Court denied Respondents' motion, and granted in part and denied in part the Division's motion. The Court denied the Division's motion in regard to penalties. Pursuant to the Court's May 8, 2019 Scheduling Order, the parties' summary disposition reply briefs were due today. To the extent replies are mooted by the Court's earlier ruling, the Division asks the Court to consider this its supplemental pre-hearing brief on the issue of penalties. The Scheduling Order noted with approval that the parties intend to use their summary disposition briefs as their pre-hearing briefs. (Scheduling Order 2 n.1.)

The OIP found that Respondents willfully violated the Securities Act of 1933, Section 17(a); the Securities Exchange Act of 1934, Section 10(b) and Rule 10b-5 thereunder; and the Investment Advisers Act of 1940, Sections 206(1), 206(2), and 206(4) and Rule 206(4)-8 thereunder.

In the OIP, the Commission also entered a cease-and-desist order against Respondents, censured SJL, and ordered that Rossi be subject to an industry bar.

The OIP also ordered additional proceedings solely to determine the appropriate amounts of disgorgement, prejudgment interest on that disgorgement, and civil penalties against Respondents. For purposes of determining the appropriate remedies against Respondents, the OIP's factual findings—including those detailing their fraud—are deemed true. Respondents have filed no Answer to the OIP's allegations.

On June 7, 2019, the parties filed cross motions for summary disposition. The Division's motion requested summary disposition on disgorgement, prejudgment interest, and civil penalties. Respondents' moved for summary disposition only on the issue of inability to pay.

On July 23, 2019, the Court entered an order granting in part and denying in part the Division's motion, and denying Respondents' motion. The Court granted the Division's request for disgorgement and prejudgment interest.[2] The Court, however, denied the Division's request for summary disposition on the issue of civil penalties. Although the Court found the Division had established that the "threshold requirements for third tier penalties—fraud, deceit, or manipulation

[2] The Court requested the Division provide an updated prejudgment interest amount after the hearing, which the Division will do.

plus substantial losses—are met" (Op. 7), the Court held that the Division had not shown what "the appropriate unit of violation or penalty" should be in this case. *Id.*

Accordingly, the Division hereby submits this additional brief concerning the appropriate unit of violation and penalty amount.

II.

RESPONDENTS SHOULD BE ORDERED TO PAY A THIRD-TIER PENALTY FOR EACH ACT VIOLATED.

In its recent opinion, the Court held that, under the present circumstances, the applicable securities laws provide for maximum third-tier penalties against an individual—for each violation- of $173,437 (Securities Act) and $189,427 (Exchange Act and Advisers Act).[3] (Op. 6.)

The Court has considerable discretion to determine the magnitude of the total civil penalty imposed, as the tiered statutory maximum amounts are not overall limitations but only limitations for each violation. *In the Matter of John A. Carley et al.*, Rel. No. 292, 2005 WL 1750288, at *68 (July 18, 2005). The Court also has discretion to determine what constitutes "each" violative act on Respondents' part, and then order them to pay a total civil penalty that is multiplied by each violation. *In the Matter of J.S. Oliver Capital Mgmt., LP*, Rel. No. 4431, 2016 WL 3361166, at *14-15 (June 17, 2016) ("This variation in calculating the number of acts or omissions sanctioned in particular cases is a feature of the discretion granted to us in the penalty regime that Congress created."). Given the wide flexibility authorized by Congress, both the Commission and federal courts have used a variety of methods for calculating the number of sanctionable violations. *Id.* at

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[3] The Court also notes that the maximum third-tier penalties against an entity are $838,275 (Securities Act) and $947,130 (Exchange Act and Advisers Act). (Op. 6.)

*15 (listing various methods utilized by the Commission and federal courts). Those methods include, but are not limited to, the following:

- Counting each individual act of misconduct as a separate violation. See *id. at *17; SEC v. Pentagon Capital Management PLC*, 725 F.3d 279, 288 n.7 (2d Cir. 2013) (affirming district court's imposition of third-tier penalties by counting each late trade as a separate violation).
- Counting each investor who was defrauded. *See SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 17 n.15 (D.D.C. 1998) ("multiplying the maximum third tier penalty for natural persons . . . by the number of investors who actually sent money to [defendant]").
- Counting the number of statutes defendant violated. SEC v. *Shehyn*, 2010 WL 3290977, at *2, *8 (S.D.N.Y. Aug. 9, 2010) (court found that the defendant "committed 5 [statutory] violations" and awarded "$120,000 for each violation: Section 10(b), Rule 10b–5, Section 17(a), Section 20(a) and Section 15(a)"); *SEC v. Johnson*, 2006 WL 2053379, at *10 (S.D.N.Y. Jul. 24, 2006) ("Because the jury found Johnson liable for four violations of securities fraud, civil penalties will be ordered for these four violations.").

Here, the Division requests that the Court impose on Respondents, jointly and severally, a separate third-tier penalty of $173,437 for each of the three statutes Respondents violated: the Securities Act, the Exchange Act, and the Investment Advisers Act. *See Shehyn*, 2010 WL 3290977, at *2, *8 (calculating number of violations based on number of statutes violated); *Johnson*, 2006 WL 2053379, at *10 (same). In this case, that would amount to a penalty of

$520,311. Although significant, it amounts to approximately 29% of the total losses suffered by Respondents' victims as a direct result of their fraudulent conduct.

A total penalty of $520,311 is much less than the Court has discretion to impose. For example, if the Court calculated each violation based on the number of false statements Respondents made—at least seven (7), for a total civil penalty of $1,214,059 (Stmt. Facts ¶¶ 13, 14, 19, 22, 27-28, 31, 34)—or by the number of investors/clients who suffered losses as a result of Respondents' fraud—four (4), for a total civil penalty of $693,748. (*Id.* ¶¶ 13, 26, 29, 31.) It is also fair considering the amount of harm Respondents caused. *See J.S. Oliver*, 2016 WL 3361166, at *15 (assessing total penalties that "are somewhat more than one-half" of the sum of the total harm that Respondents caused plus the amount of disgorgement ordered). And, it is equal to approximately 18 times the amount of disgorgement ordered ($28,935), which places it well within the range of multiples of disgorgement that the D.C. Court of Appeals identified as being imposed in administrative proceedings. *Collins v. SEC*, 736 F.3d 521, 525 (D.C. Cir. 2013) (observing that civil penalties in administrative proceedings "rang[e] from roughly on-half of the disgorgement amount ... to about 25 times" disgorgement, but sustaining a penalty on an individual that was 100 times disgorgement) (cited with approval by *J.S. Oliver*, 2016 WL 3361166, at *21).

Finally, the penalty should not be reduced because of Respondent Rossi's alleged inability to pay. First, as discussed in the Division's prior briefing on summary disposition, Rossi has not proven his inability to pay. Second, even if he had adequately demonstrated his inability to pay, he

deserves no leniency from the Court. His conduct here was too egregious and the harm he inflicted was too substantial for him to evade paying a just and fair civil penalty.[4]

III.

CONCLUSION

The Division respectfully requests that the Court impose civil penalties against Respondents, jointly and severally, in the amount of $520,311.

Dated: July 26, 2019

Respectfully submitted,

By:

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[4] The penalty (as well as the other monetary relief awarded) should be imposed jointly and severally against Respondents because Rossi owned and controlled SJL, was solely responsible for its decisions, and was effectively SJL's alter ego. (*See* Stmt. Facts ¶¶ 8-10 ("Rossi was the founder, managing partner, and 80% majority owner of SJL"; "Rossi was the managing partner of SJL… and Rossi was solely responsible for … SJL's investment decisions.").) *In the Matter of Walter V. Gerasimowicz*, Rel. No. 496, 2013 WL 3487073, at *7 (ALJ July 12, 2013).

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In the Matter of **Matthew R. Rossi and** **SJL Capital, LLC**	**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that he served the attached **Division of Enforcement's Reply Brief Supporting Summary Disposition on Civil Penalties** on the following parties, on July 26, 2019, via email:

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[redacted]
Fairfield, CT [redacted]
Email: [redacted]@yahoo.com

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c/o Matthew R. Rossi
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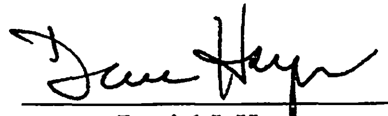
Email: secolo3@yahoo.com



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