UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Rel. No. 9633 / August 21, 2014

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 72896 / August 21, 2014

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 3902 / August 21, 2014

INVESTMENT COMPANY ACT OF 1940
Rel. No. 31220 / August 21, 2014

Admin. Proc. File No. 3-15002

In the Matter of

JAY T. COMEAUX

**ORDER REMANDING FOR FURTHER PROCEEDINGS**

Jay T. Comeaux appeals from an administrative law judge's initial decision ordering that he disgorge $3,386,974.50, less the value of his assets under the control of the court-appointed receiver in *SEC v. Stanford*, plus prejudgment interest.[1] The initial decision followed the issuance of an Order Instituting Proceedings, Making Findings, Imposing Remedial Sanctions, and Notice of Hearing ("Order").[2] The Order accepted Comeaux's offer of settlement, pursuant to which Comeaux consented to (i) the findings of fact and conclusions of law in the Order, but solely for the purpose of this proceeding and any other proceedings brought by or on behalf of the Commission or to which the Commission is a party;[3] (ii) cease and desist from committing or causing any violations and any future violations of

1 *Jay T. Comeaux*, Initial Decision Release No. 494, 2013 WL 3327753 (July 2, 2013). The law judge found that Comeaux has $1,435,236 in assets frozen and subject to the control of the receiver in *SEC v. Stanford*, No. 3-090cv-0298-N (N.D. Tex. 2009), an antifraud action against defendants Robert Allen Stanford; three of his companies, Stanford International Bank, Stanford Group Company, and Stanford Capital Management; and other defendants, concerning a massive Ponzi scheme.

2 *Jay T. Comeaux*, Exchange Act Release No. 67768, 2012 WL 3775895, at *1 (Aug. 31, 2012).

3 Comeaux neither admitted nor denied the findings in the Order, except he admitted the findings as to the Commission's jurisdiction over him and the subject matter of these proceedings. *Comeaux*, 2012 WL 3775895, at *1.

Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940; (iii) a bar from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization, from serving or acting as an employee in any capacity of a registered investment company or affiliated person, and from participating in offering of penny stock in any capacity, with any reapplication subject to certain conditions; and (iv) additional proceedings to determine what, if any, disgorgement and civil penalties are in the public interest.[4] This appeal concerns the additional proceedings.

The parties agreed to have the additional proceedings determined via the Division's motion for summary disposition pursuant to Rule of Practice 250.[5] In deciding that motion, the law judge ordered Comeaux to disgorge the amounts noted above and found that civil penalties are not in the public interest. Comeaux appealed only the law judge's findings with respect to disgorgement, and the Division of Enforcement did not file a cross-appeal. But upon granting Comeaux's petition for review, we notified the parties that, pursuant to Rule of Practice 411,[6] we will also "consider whether the sanctions imposed by the law judge adequately serve the public interest."[7]

For the reasons set forth below, we set aside the disgorgement ordered and remand for further proceedings consistent with this order to determine what, if any, disgorgement and civil penalties are in the public interest.[8]

## I. Findings of fact and antifraud violations

We presume familiarity with the findings in the Order, which are deemed true for purposes of this proceeding,[9] and briefly summarize them here.

Comeaux was president of broker-dealer and investment adviser Stanford Group Company ("SGC") from January 1996 until March 2005, and was executive director of SGC between March 2005 and February 2009. He was also a registered representative/advisory representative of SGC. SGC was a wholly owned subsidiary of Stanford Group Holdings, Inc., which in turn was owned and controlled by

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4 *Comeaux*, 2012 WL 3775895.

5 17 C.F.R. § 201.250.

6 17 C.F.R. § 201.411.

7 *Jay T. Comeaux*, Exchange Act Release No. 70328, 2013 WL 4761502, at *1 (Sept. 5, 2013).

8 *See* SEC Rule of Practice 411(a), 17 C.F.R. § 201.411(a) ("The Commission may . . . remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper and on the basis of the record."); SEC Rule of Practice 452, 17 C.F.R. § 201.452 ("The Commission may . . . remand or refer the proceeding to a hearing officer for the taking of additional evidence, as appropriate."). Our review of the proceeding is *de novo*. *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *9 n.44 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

9 *See Comeaux*, 2012 WL 3775895.

Robert Allen Stanford.[10] Robert Allen Stanford also owned and controlled Stanford International Bank ("SIB"), a private international bank.

During his tenure at SGC, Comeaux recommended and sold SIB certificates of deposit ("CDs") to brokerage customers and recommended portfolio allocation products that included SIB CDs to advisory clients. Comeaux marketed the SIB CDs using a brochure representing that SIB maintained a "comprehensive insurance program" that provided "depositor security" even though he knew that SIB CDs were not insured. Comeaux also marketed the SIB CDs using materials representing that SIB maintained a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multi-national companies and major international banks." But this representation was not true, and Comeaux (i) had no basis to make this representation other than his reliance on SIB's representations and (ii) knew that SIB would not disclose the details of its investment holdings to him or other SGC executives or representatives.

Comeaux was also responsible for "overall supervision of all" SGC financial advisers, who also recommended and sold SIB CDs. In recommending SIB CDs to their clients, Comeaux and SGC's financial advisers (i) "did not have a reasonable basis to recommend SIB CDs to investors" and (ii) failed to disclose material conflicts of interest because they failed "to fully disclose SGC's and their own financial interest in selling the SIB CDs."[11]

For these and other reasons set forth in the Order, Comeaux was found to have willfully violated and willfully aided and abetted and caused violations by SIB and SGC of Securities Act Section 17(a), willfully aided and abetted and caused SIB's and SGC's violations of Exchange Act Section 10(b) and Rule 10b-5, and willfully aided and abetted and caused SGC's violations of Investment Advisers Act Sections 206(1) and 206(2).

## II. Analysis

### A. Standard for Summary Disposition

Pursuant to Rule of Practice 250, the law judge may grant a motion for summary disposition "if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law."[12] Once the moving party has carried its burden of establishing that it is entitled to summary disposition on the factual record, the opposing party may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing.[13] The facts on summary disposition must be viewed in the light most favorable to

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[10] In March 2012, Robert Allen Stanford was convicted of orchestrating a $7 billion Ponzi scheme that was funded through the sale of certificates of deposit issued by Stanford International Bank. He was subsequently sentenced to 110 years' imprisonment.

[11] In 2007 and 2008, SGC financial advisers sold over $2 billion in SIB CDs. Throughout Comeaux's tenure with SGC, sales of SIB CDs generated more than half of SGC's total revenues.

[12] 17 C.F.R. § 201.250(b).

[13] *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *16 (Nov. 4, 2013).

the non-moving party.[14]

**B. The Division did not support its motion for summary disposition with sufficient evidence on the disgorgement amount.**

The Commission may order disgorgement, including reasonable interest, in cease-and-desist proceedings and proceedings in which it may impose civil penalties.[15] Disgorgement is an equitable remedy designed to deprive wrongdoers of their unjust enrichment and to deter others from violating the securities laws by making violations unprofitable.[16]

The Division has the initial burden of demonstrating "a reasonable approximation of profits causally connected to the violation."[17] The Division need only show but-for causation between a defendant's violations and profits.[18] The burden then "shifts to the respondent to demonstrate that the Division's estimate is not a reasonable approximation."[19] Uncertainty as to the amount of unjust enrichment will not prevent disgorgement.[20]

Here, in support of its summary disposition motion, the Division introduced only the declaration of its accounting expert, Karyl Van Tassel,[21] setting forth amounts Comeaux purportedly received from SGC

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[14] *Robert L. Burns*, Advisers Act Release No. 3260, 2011 WL 3407859, at *9 (Aug. 5, 2011).

[15] 15 U.S.C. §§ 77h-1(e), 78u-2(e), 80b-3(j).

[16] *SEC v. Huffman*, 996 F.2d 800, 802 (5th Cir. 1993); *SEC v. First City Fin. Corp., Ltd.*, 890 F.2d 1215, 1230-31 (D.C. Cir. 1989); *Gregory O. Trautman*, Exchange Act Release No. 61167A, 2009 WL 6761741, at *21 (Dec. 15, 2009).

[17] *First City Fin. Corp.*, 890 F.2d at 1231; *SEC v. Halek*, 537 F. App'x 576, 581 (5th Cir. 2013); *Trautman*, 2009 WL 6761741, at *22.

[18] *SEC v. Teo*, 746 F.3d 90, 105-07 (3d Cir. 2014).

[19] *Trautman*, 2009 WL 6761741, at *22; *Halek*, 537 F. App'x at 581; *First City Fin. Corp.*, 890 F.2d at 1232.

[20] *First City Fin. Corp.*, 890 F.2d at 1232 ("[T]he risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty."); *SEC v. Razmilovic*, 738 F.3d 14, 31 (2d Cir. 2013) ("[B]ecause of the difficulty of determining with certainty the extent to which a defendant's gains resulted from his frauds . . . the court need not determine the amount of such gains with exactitude."); *SEC v. First Pac. Bancorp.*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998) ("The district court was not required to trace every dollar of" unjust enrichment.).

[21] According to her declaration, Van Tassel was a senior managing director of FTI Consulting, Inc., which was retained by the receiver for SIB and the other Stanford entities (the "Stanford Entities") in 2009 to assist "in the capture and safeguarding of electronic accounting and other records of the Stanford Entities and forensic accounting analyses of those records, including cash tracing." The receiver for the Stanford Entities was appointed on February 16, 2009, by the U.S. District Court for the Northern District of Texas in *SEC v. Stanford*, No. 3-090cv-0298-N.

in regular earnings, commissions, bonuses, and other payments.[22] Van Tassel states that Comeaux received in total at least $7,457,985.83 between January 15, 2005 and February 13, 2009,[23] of which $3,386,974.50 was "directly related to and based only on the sale of SIB CDs by Mr. Comeaux and others at his direction at" SGC.[24] Van Tassel bases her findings on her and her "team's review of records from the Stanford Entities that are in possession of the Receiver."

The law judge ordered disgorgement based on Van Tassel's calculation of $3,386,974.50 Comeaux received "directly related to and based only on the sale of SIB CDs." The law judge rejected the Division's request for disgorgement based on Van Tassel's calculation of the full $7,457,985.83 Comeaux received, finding that it included payments earned through legitimate activities.[25]

As discussed above, the Division need not introduce evidence of the precise amount of ill-gotten gains to carry its burden; rather, the risk of uncertainty falls on the wrongdoer.[26] But where, as here, the Division's approximation of a respondent's gains from violative conduct is based on an expert's analysis of specific financial records, the Division must submit sufficient evidence for us to assess the reasonableness of that analysis. On the record before us, we cannot meaningfully review the reasonableness of either

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[22] Van Tassel attaches a summary chart to her declaration, which repeats the total amounts she asserts SGC paid Comeaux. Comeaux contends it was error for Van Tassel's declaration and summary chart to have been admitted into evidence because they are "conclusory, fail[] to adequately explain the source of the funds discussed, and fail[] to explain how the information contained therein is within the personal knowledge of Ms. Van Tassel." Comeaux's objections go to the weight of the Division's evidence and not its admissibility. Because the Division's evidence is relevant to disgorgement, we find that it was properly admitted. *See* SEC Rule of Practice 320, 17 C.F.R. § 17 C.F.R. § 201.320 ("[T]he hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.").

[23] Van Tassel states that she and her team did not analyze payments to Comeaux before January 2005 because of the "limited availability of data concerning" that time period and the "difficulty and costs associated with assessing and analyzing such records."

[24] In addition, Van Tassel ties "the majority of the payments received by" Comeaux "to the sale of SIB CDs" because, she claims, (i) the majority of SGC's income "from 2004 through 2008 consisted of proceeds from the sale of SIB CDs"; and (ii) SGC would have been "insolvent from at least 2004 forward" if it had not been for the "proceeds from the sale of SIB CDs."

[25] The Division did not cross-appeal the law judge's determination not to order $7,457,985.83 in disgorgement, but its brief on appeal indicates it believes this is the appropriate amount. If the Division determines to pursue the larger disgorgement amount on remand, the parties should consider addressing cases where, as the Division alleges here, the violative conduct allowed the defendant to continue receiving compensation. *See, e.g.*, *First Pac. Bancorp*, 142 F.3d at 1192; *SEC v. Posner*, 16 F.3d 520, 522 (2d Cir. 1994); *SEC v. Black*, No. 04 C 7377, 2009 WL 1181480, at *3-4 (N.D. Ill. Apr. 30, 2009), *motion for relief from judgment granted in part on other grounds*, No. 04 C 7377, 2012 WL 601858 (N.D. Ill. Feb. 21, 2012); *SEC v. Church Extension of the Church of God, Inc.*, 429 F. Supp. 2d 1045, 1050 (S.D. Ind. 2005); *Trautman*, 2009 WL 6761741, at *22-23.

[26] *First City Fin. Corp.*, 890 F.2d at 1232; *Razmilovic*, 738 F.3d at 31; *First Pac. Bancorp.*, 142 F.3d at 1192 n.6.

amount Van Tassel calculated, $3,386,974.50 or $7,457,985.83, because the Division did not introduce any of the records on which she relies or explain her methodology in analyzing the underlying data.[27]

We have additional cause to be concerned about the reasonableness of Van Tassel's findings. Comeaux contends, and the Division does not dispute, that Van Tassel double-counted $289,010 in calculating the total payments to Comeaux of $7,457,985.83 by including that amount as an upfront loan in anticipation of his earnings and as a cash payment for his earnings.[28] And Comeaux's contention seems correct from our review of the declaration, thus underlining the need for additional evidence to assess the reasonableness of Van Tassel's findings.[29]

On this record we therefore find that the Division did not meet its burden of showing that there is no genuine issue of material fact, or that it is entitled to summary disposition as a matter of law.[30] Had the law judge made such a finding she would have set the matter down for a public hearing as directed by the Order.[31] Accordingly, we set aside the disgorgement ordered and remand for further proceedings to determine what, if any, disgorgement is in the public interest.

Moreover, because the law judge previously decided not to impose civil penalties based, in part, on her finding that disgorgement and the other sanctions imposed were a sufficient deterrent, she may reconsider on remand whether civil penalties are in the public interest.[32] The law judge may, of course, consider any new analysis or evidence presented on this issue.

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[27] *See SEC v. Seghers*, 404 F. App'x 863, 864 (5th Cir. 2010) (affirming order denying disgorgement where district court found that declaration of accountant supporting disgorgement claim was conclusory and did not explain how the documents submitted therewith supported the accountant's findings).

[28] The Division dismisses any error by Van Tassel, asserting that it "does not change the fact that the forensic accountant's work overall provides a reasonable approximation of Comeaux's ill-gotten gains."

[29] Comeaux also argues that his tax returns demonstrate that he and his wife's "combined total earnings were a maximum of $6,264,589" between January 15, 2005 and February 13, 2009. But this goes more to Comeaux's subsequent burden to demonstrate that the Division's estimate is not a reasonable approximation of unjust enrichment, which we need not address because the burden has not yet shifted to Comeaux.

[30] We note that, pursuant to SEC Rule of Practice 360(a)(2), 17 C.F.R. 201.360(a)(2), the Order specified a 300-day time period for issuance of the initial decision rather than the shorter 120- or 210-day options. As provided by Rule 360(a)(2), the Commission bases this specification on its consideration of "the nature, complexity, and urgency of the subject matter . . . ." We urge parties in the future to consider whether, if the Commission has determined that a particular matter is not an appropriate vehicle for the 120- or 210-day time periods, it is an appropriate vehicle for a motion for summary disposition.

[31] *Comeaux*, 2012 WL 3775895, at *5.

[32] We note that the law judge stated as an additional reason for not imposing civil penalties that "[s]ubstantial penalties" such as disgorgement and cease-and-desist orders "have already been imposed against Comeaux." *Comeaux*, 2013 WL 3327753, at *5. But disgorgement and cease-and-desist orders are not punitive sanctions. *Laurie Jones Canady*, Exchange Act Release No. 41250, 1999 WL 183600, at *11 (Apr. 5, 1999). Civil penalties, on the other hand, serve the "dual goals of punishment of the

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### C. On remand, disgorgement need not be limited to payments Comeaux received based solely on his own personal sale of SIB CDs.

Comeaux contends that he may not be ordered to disgorge payments he received based on the sale of SIB CDs by other financial advisers. Comeaux argues that any such disgorgement based on imputing the conduct of SIB, SGC, or anyone else to himself would be inappropriate because the Order "is clear as to the violations of Comeaux: (1) Comeaux did not have a reasonable basis to recommend SIB CDs to investors . . . ; 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 interest."

But Comeaux's violations were related not only to his sale of SIB CDs but also to his role as a president and executive director of SGC with responsibility for the "overall supervision of all" SGC financial advisers. In setting forth Comeaux's violations, the Order stated that "SGC, Comeaux, and the SGC [financial advisors] he supervised did not have a reasonable basis to recommend SIB CDs to investors," and that "[b]y failing to fully disclose SGC's and their own financial interest in selling the SIB CDs, SGC, Comeaux, and SGC's [financial advisors] failed to disclose material conflicts of interest."[33] As a result of this and other conduct described in the Order, Comeaux was found not only to have engaged in direct violations but also to have willfully aided and abetted and caused SIB's and SGC's violations of Securities Act Section 17(a), Exchange Act Section 10(b), and Rule 10b-5, and to have willfully aided and abetted and caused SGC's violations of Investment Advisers Act Sections 206(1) and 206(2). Accordingly, we reject Comeaux's contention that any disgorgement must be based solely on receipts from his own personal sales of SIB CDs.

### D. Cooperation and settlement are not factors affecting disgorgement.

Comeaux contends that his cooperation with the Commission and other authorities, including his settlement of the underlying proceeding, should be taken into account in determining disgorgement.[34] We disagree.[35] Disgorgement is not a punitive sanction, but rather "primarily serves to prevent unjust

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individual violator and deterrence of future violations." *Montford and Co., Inc.*, Advisers Act Release No. 3829, 2014 WL 1744130, at *25 (May 2, 2014) (quoting *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006)); *Bear Wagner Specialists LLC*, Exchange Act Release No. 64553, 2011 WL 2098098, at *8 (May 26, 2011) ("Like disgorgement, penalties serve as a deterrent, but unlike disgorgement, penalties punish individual violators for their wrongdoing.").

[33] *Comeaux*, 2012 WL 3775895, at *3.

[34] Comeaux also contends that the law judge should have admitted into evidence the affidavit of Daniel K. Hedges, which details Comeaux's cooperation. While we find that cooperation is irrelevant for purposes of determining disgorgement for the reasons discussed below, we nevertheless admit the Hedges affidavit in an exercise of discretion pursuant to SEC Rule of Practice 452, 17 C.F.R. § 201.452.

[35] The cases cited by Comeaux in support of his argument are inapposite because they concern the imposition of suspensions, bars, and civil penalties, and not disgorgement. *See Justin F. Ficken*, Exchange Act Release No. 58802, 2008 WL 4610345, at *3-4 (Oct. 17, 2008); *J.H. Goddard & Co.*, Exchange Act Release No. 7618, 1965 WL 87926, at *4 (June 4, 1965); *Stonegate Sec., Inc.*, Exchange Act Release No. 44933, 2001 WL 1222203, at *4-5 (Oct. 15, 2001).

enrichment."[36] For this reason, the federal courts that have addressed this issue have consistently found that a defendant's cooperation is not "sufficient to preclude disgorgement or reduce the disgorgement amount."[37]

We similarly reject Comeaux's contention that, in determining disgorgement, we should apply the public interest factors set forth in *Steadman v. SEC*, Exchange Act Section 21B(c), Advisers Act Section 203(i)(e), and Investment Company Act Section 9(d)(3). The *Steadman* factors are applied when determining whether a bar is appropriate,[38] and the public interest factors in Exchange Act Section 21B(c), Advisers Act Section 203(i)(e), and Investment Company Act Section 9(d)(3) are applied when determining whether civil penalties are appropriate.[39] We apply the standard set forth above in section II.B. for determining disgorgement.

Because we have decided to remand this proceeding, we need not address the parties' remaining contentions, including those concerning Comeaux's financial ability to pay disgorgement, interest, or civil penalties. Comeaux may introduce additional evidence or analysis on these issues on remand.[40]

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[36] *First City Fin. Corp.*, 890 F.2d at 1231; *cf. SEC v. Contorinis*, 743 F.3d 296, 306-07 (2d Cir. 2014) ("As disgorgement is designed to equitably deprive those who have obtained ill-gotten gains of enrichment, it may be imposed upon innocent third parties who have received such ill-gotten funds and have no legitimate claim to them. That is consistent with disgorgement's remedial purpose—disgorgement is imposed not to punish, but to ensure illegal actions do not yield unwarranted enrichment even to innocent parties.").

[37] *SEC v. Mortenson*, No. CV-04-2276, 2013 WL 991334, at *5 (E.D.N.Y. March 11, 2013); *SEC v. Reynolds*, No. 3:08-CV-0438-B, 2013 WL 3479825, at *3 (N.D. Tex. July 11, 2013) (finding that cooperation is "largely irrelevant to the disgorgement determination"); *SEC v. Thorn*, No. 2:01-CV-290, 2002 WL 31412440, at *3 (S.D. Ohio Sept. 30, 2002) (granting the SEC's motion to strike the defendant's defense that disgorgement is barred as a result of the defendant's willingness to cooperate because the defendant did not cite, and the court did not find, "any legal authority to support [the defendant's] position that his willingness to cooperate on nonmonetary terms can offset the remedy of disgorgement").

[38] *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). These factors include the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. *Id.*

[39] 15 U.S.C. §§ 78u-2(c), 80a-9(d)(3), 80b-3(i)(3). These factors include (1) whether the act or omission involved fraud; (2) whether the act or omission resulted in harm to others; (3) the extent to which any person was unjustly enriched, taking into account restitution made to injured persons; (4) whether the individual has committed previous violations; (5) the need to deter such person and others from committing violations; and (6) such other matters as justice may require. *Id.*

[40] SEC Rule of Practice 630(a), 17 C.F.R. § 201.630(a) ("In any proceeding in which an order requiring payment of disgorgement, interest or penalties may be entered, a respondent may present evidence of an inability to pay disgorgement, interest or a penalty. The Commission may, in its discretion, or the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement, interest or a penalty is in the public interest."); *see also Trautman*, 2009 WL 6761741, at

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We do not suggest any view as to the outcome on remand.

## III. Conclusion

Accordingly, IT IS ORDERED that the disgorgement ordered against Respondent Jay T. Comeaux is set aside; and it is further

ORDERED that this proceeding be remanded to the administrative law judge for further proceedings consistent with this order to determine what, if any, disgorgement and civil penalties are in the public interest; and it is further

ORDERED that the administrative law judge shall issue an initial decision no later than 300 days from the date of service of this order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

By the Commission (Chair WHITE and Commissioner AGUILAR); Commissioner PIWOWAR dissenting; Commissioners GALLAGHER and STEIN not participating.

Lynn M. Powalski
Deputy Secretary

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*24 ("Ability to pay, however, is only one factor that informs our determination and is not dispositive. 'Even when a respondent demonstrates an inability to pay, we have discretion not to waive the penalty, [disgorgement, or interest,] particularly when the misconduct is sufficiently egregious.'") (quoting *Philip A. Lehman*, Exchange Act Release No. 54660, 2006 WL 3054584, at *4 (Oct. 27, 2006)).