UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 726/September 25, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14623

In the Matter of		
LEADDOG CAPITAL MARKETS, LLC, f/k/a LEADDOG CAPITAL PARTNERS, INC., CHRIS MESSALAS, and JOSEPH LAROCCO, ESQ.	:	ORDER

Under consideration is Respondents' Motion to Correct a Manifest Error of Fact (Motion to Correct), filed on September 24, 2012, pursuant to 17 C.F.R. § 201.111(h). The filing relates to the September 14, 2012, Initial Decision (ID) in this proceeding and is thus timely. However, it does not identify a patent misstatement of fact in the ID. Thus, it must be denied.[1]

BACKGROUND

The ID found that Respondents established a hedge fund, Leaddog Capital L.P. (the Fund), in late 2007 and provided materials to investors and potential investors containing incomplete or false representations as to Chris Messalas's disciplinary history, the liquidity of the Fund's investments, and related-party transactions and concluded that Respondents violated the antifraud provisions of the federal securities laws. Among other sanctions, the ID ordered Respondents, jointly and severally, to disgorge ill-gotten gains of $220,572.

MOTION TO CORRECT

Respondents address the ID's finding that

> [t]he Fund paid Leaddog [Capital Markets, LLC, f/k/a Leaddog Capital Partners, Inc. (Leaddog)] $13,389 in management fees[19] and $96,847 in performance allocations during the period November 1, 2007, to December 31, 2008.
>
> [19] The 2% management fee amounted to $21,936, but Leaddog forgave the balance over the $13,389 that was actually paid.

[1] In light of the outcome, the Division of Enforcement's request for a postponement of the filing date for its Opposition is moot.

Respondents argue, for the first time, that the $96,847 figure was a mere accounting allocation of unrealized appreciation and was not actually "paid," pointing to Division of Enforcement (Division) Exhibits 5 at ENFLD-002437 and 81 at ENFLD-013713-14. Accordingly, they argue, the undersigned should not have ordered this sum to be disgorged.[2] However, pursuant to 17 C.F.R. § 201.111(h), "[a] motion to correct is properly filed . . . only if the basis for the motion is a patent misstatement of fact in the initial decision." Rather than pointing to a "patent misstatement of fact," Respondents are urging a different conclusion to be drawn from the evidence.

The total disgorgement figure of $220,572 was reached by accepting the Division's calculation made in its post-hearing filings – doubling the amount that Leaddog received during its first year of operation in management fees and performance allocation in order to include an estimated total for 2009.[3] Respondents now argue, for the first time, that the Division did not introduce any evidence regarding actual profits in 2009, and, thus, no disgorgement should be ordered for that year. Again, not only did Respondents not specifically dispute the Division's calculation in their post-hearing filings, but, rather than pointing to a "patent misstatement of fact," they are urging a different conclusion to be drawn from the evidence.

In light of the above, the Motion to Correct must be denied.

IT IS SO ORDERED.

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Carol Fox Foelak
Administrative Law Judge

[2] Respondents argue that, instead, Leaddog should have been ordered to reverse the $96,847 allocation in its favor. However, the undersigned is limited to the sanctions authorized by the statutes under which this proceeding was brought.

[3] The amount of the disgorgement ordered need only be a reasonable approximation of profits causally connected to the violation. See Laurie Jones Canady, Exchange Act Release No. 41250 (Apr. 5, 1999), 69 SEC Docket 1468, 1487 n.35 (quoting SEC v. First Jersey Sec., Inc., 101 F.3d 1450, 1475 (2d Cir. 1996)), petition for review denied, 230 F.3d 362 (D.C. Cir. 2000); see also 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 SEC v. First City Fin. Corp., Ltd., 890 F.2d 1215, 1230-31 (D.C. Cir. 1989).