RECEIVED
NOV 17 2014
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15255

In the Matter of

JOHN THOMAS CAPITAL MANAGEMENT GROUP, LLC, d/b/a PATRIOT28, LLC,

GEORGE R. JARKESY JR.,

JOHN THOMAS FINANCIAL, INC.,

ANASTASIOS "TOMMY" BELESIS,

Respondents.

THE DIVISION OF ENFORCEMENT'S CROSS PETITION FOR REVIEW

Todd D. Brody
Senior Trial Counsel
Securities and Exchange Commission
New York Regional Office
Brookfield Place
New York, NY 10281
Tel. (212) 336-0080
brodyt@sec.gov

Alix Biel
Senior Staff Attorney
Securities and Exchange Commission
New York Regional Office
Brookfield Place
New York, NY 10281-1022
Tel. (212) 336-0028
biela@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 rendered by Administrative Law Judge Carol Fox Foelak on October 17, 2014. The Division seeks review under Rule of Practice 411(b)(2)(ii) of the disgorgement and civil monetary penalties that were jointly and severally ordered against Respondents John Thomas Capital Management LLC d/b/a/ Patriot28 LLC ("JTCM") and George R. Jarkesy ("Jarkesy"), both of whom petitioned for review of the Initial Decision on various grounds on November 7, 2014. The Division also seeks review under Rule of Practice 411(b)(2)(ii) of that part of the Initial Decision denying the Division's request for an accounting. Finally, the Division seeks an expedited review of the Initial Decision based on its reasonable concerns that investor funds will be wasted while this review is pending.

The Division takes exception to the law judge's calculation of the disgorgement amount. While the law judge correctly found that Respondents are jointly and severally liable to disgorge $1,278,597 of management fees they charged the two funds they managed, she erroneously excluded incentive fees the Respondents received on the grounds that there was no evidence in the record to establish the amount. However, Division Exhibit 309, a ledger for one of the funds the Respondents managed, demonstrates that the Respondents received at least $123,338.38 of incentive fees in 2010. Based on this document, which is part of the record, the Commission should adjust the disgorgement order to include this additional amount.

The Division also takes exception to the law judge's calculation of penalty amounts. While the law judge correctly found that penalties were in the public interest based on Respondents' conduct and the harm to investors, and also held that deterrence required a

substantial penalty "because of the abuse of the fiduciary duty owed by investment advisors," the Division submits that the $450,000 penalty is insufficient.

In light of the egregious conduct that the Respondents visited on their investors, the Division respectfully requests that the Commission increase the civil monetary penalties imposed on the Respondents to a maximum third-tier penalty per act or omission as is allowed by the relevant statutes.[2] The law judge found that the funds managed by Respondents have approximately 120 investors. Each of these investors was defrauded by virtue of the misrepresentations made during the relevant time period and the misrepresentations to each investor constitute a separate act or omission for purposes of calculating the appropriate penalty. Thus, Respondents should be penalized separately for each of the 120 investors they harmed. Alternatively, the Division respectfully requests that the Commission increase the civil monetary penalties for each of the Respondents' twenty-two misrepresentations and omissions.[3]

---

[2] Third-tier penalties are appropriate where, as here, the act or omission involved fraud, deceit, or manipulation and directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

[3] The Division's post-hearing memorandum of law and proposed findings of fact demonstrate that in the Private Placement Memoranda ("PPM") and Limited Partnership Agreements, Respondents misrepresented that: (1) the Funds would purchase insurance policies with face value of 117% of the investor capital; (2) half of all investor capital would be used to purchase the insurance policies or would be set aside and segregated to pay premiums; (3) Respondents would mitigate life expectancy risk; (4) the insurance policies would be transferred to the Master Trust; (5) the total investment of the partnership in any one company at any one time would not exceed 5% of the aggregate capital commitments; (6) the general partner, JTCM, would utilize good faith; (6) fair value would be used to value securities where no market quotation was readily available; (7) the Funds' financial statements would be prepared according to generally accepted accounting principles ("GAAP"); and (8) management of the partnership would be vested exclusively in the General Partner. Respondents' marketing materials and investor updates made additional misrepresentations, including that: (1) KPMG was the auditor for the Funds; (2) Deutsche Bank was the prime broker for the Funds; (3) insurance policies would be purchased from AA rated insurance companies; (4) Fund I had purchased fourteen policies from fourteen separate insurance companies; (5) the bridge loans were be "collateralized"; and (6) valuations of the Funds' assets would be conservative. Respondents' website made the additional misrepresentation that JTF did not manage, direct, or make any decisions for the Funds. In addition, Respondents fraudulently valued many of the positions in the portfolio including (1) the life insurance policies, which Respondents valued using a 12% discount rate instead of the 15% discount rate that valuation consultants had used; (2) the restricted stock, which Respondents valued at the same price as free-trading stock; (3) the notes of America West Resources ("America West") and Galaxy Media & Marketing Corp. ("Galaxy"), which Respondents valued at par notwithstanding that the notes were in default; (4) the shares of Radiant Oil & Gas, Inc. ("Radiant") and America West, which Respondents valued based upon promotional activities they paid for with money from the Funds; (5) the Radiant warrants, which Respondents valued at a non-existent stock price; and (7)

continued...

The Division also takes exception to the law judge's denial of the Division's request for an accounting of Respondents' and the funds' management, operations, and investments. The law judge correctly found that in March 2012, Respondents informed investors that they were going "to wrap up the Fund" by the end of the year. The law judge also correctly found that on March 13, 2013, Respondents dissolved one of the funds. As of the hearing dates, which took place approximately one year after the fund was dissolved and nearly two years after Respondents informed investors that they were going to "wrap up" the funds, Respondents still had not distributed fund assets to investors (with the exception of certain restricted shares in a single portfolio company). This is a violation of the partnership agreements, which obligate Respondents to use all commercially reasonable efforts to sell fund assets upon dissolution so that the money can be distributed to the investors. The investors also have not received audited financial statements since April 2011, and investors testified at the hearing that they had no idea of the present value of their investment, if anything. This is also a violation of the partnership agreements, which require audited financial reports as soon as reasonably practicable after the end of each fiscal year.

Most troubling, however, was the fact that Respondent Jarkesy repeatedly testified at the hearing that he could not identify or quantify assets the funds still held. His testimony was inconsistent with the complaint he filed in the United States District Court for the District of Columbia immediately prior to the hearing, seeking emergency and declaratory relief to prevent the hearing from going forward, in which he stated that the funds' then-current value was approximately $15 million. The Division fears that some or all of the $15 million in fund assets

---

... continued
the shares of portfolio companies like Galaxy, which Respondents overvalued, given the poor financial condition of those companies. Each of these 22 misrepresentations can serve as the basis for its own third-tier penalty.

have been dissipated and seeks an accounting to ensure the safety of the funds' assets, which ultimately belong to investors.

In sum, the funds that Respondents claim to still manage (notwithstanding the fact that they have been dissolved) are rudderless. The investors have no idea if there are any assets left or whether they have lost most of their investment. Based on Jarkesy's evasive testimony, the Division is concerned that whatever investor funds remain have been or may be used for inappropriate purposes. Consequently, the Division respectfully requests that the Commission order Respondents to provide an accounting that (1) lists the current assets of the funds and their fair value pursuant to generally accepted accounting principles; (2) lists the dates that all other portfolio positions were sold, distributed, or otherwise ceased to be in the funds and the sale price (if those positions were, in fact, sold); and (3) lists all disbursements of cash by the funds.

The law judge held that the Division had not provided her with sufficient authority to grant an accounting. However, Section 8a(e) of the Securities Act of 1933 (15 U.S.C. § 77h-1), Sections 21B(e) and 21C(e) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78u-2-78u-3), Section 9(e) of the Investment Company Act of 1940 (15 U.S.C. § 80a-9), and Sections 203(j) and 203(k)(5) of the Investment Advisers Act (15 U.S.C. § 80b-3) explicitly grant authority to the Commission to enter an order requiring an accounting.

Finally, based on the foregoing, the Division respectfully requests that the Commission conduct this review on an expedited basis in order to protect any remaining assets in the funds and bring finality to the 120 investors awaiting the outcome of the administrative proceedings.

S. Michael McColloch
S. Michael McColloch, PLLC
1717 McKinney Avenue
Dallas, TX 75202
Counsel for Respondents John Thomas Capital Management Group d/b/a Patriot28 LLC and George Jarkesy, Jr.