UNITED STATES OF AMERICA

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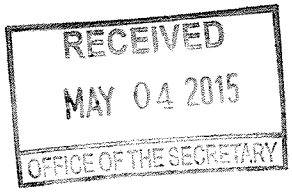
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16182

In the Matter of

PAUL EDWARD "ED" LLOYD, JR., CPA,

Respondent.



DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES AND REGULATIONS

Pursuant to Rule of Practice 340, the Division of Enforcement of the United States Securities and Exchange Commission ("Division") respectfully submits this Post-Hearing Brief in connection with the hearing held in Charlotte, North Carolina on March 19-20 and March 23-25, 2015.

I. SUMMARY

Between August 2012 and May 2013, Paul Edward "Ed" Lloyd, Jr., CPA ("Lloyd" or "Respondent") made material misrepresentations to seventeen of his tax-planning clients, including at least four who also were his formal investment advisory clients and thirteen who were prospective advisory clients. Specifically, Lloyd persuaded his clients to deposit $632,500 into a bank account that Lloyd controlled for an alleged investment in a private Regulation D offering by a third party that intended to acquire an interest in land that was expected to be preserved later through a conservation easement. Lloyd further represented to these seventeen clients that, once the easement took effect, they would obtain tax deductions based on their *pro rata* contributions and in excess of their initial investments. Rather than investing all the clients' funds, however, Lloyd invested only $502,500 in the names of fourteen clients and misappropriated the remaining $130,000 for personal expenses, including his own fraudulently inflated personal participation in the scheme. That $130,000 represented the total amount invested by three of his clients: Chris Brown, Michael Malloy and James "Rusty" Carson III.

Lloyd's actions at the time of the investment confirm his intent to misappropriate the $130,000 provided by Brown, Carson and Malloy. Most notably, the Operating Agreement that Lloyd drafted for Forest Conservation 2012, LLC, the limited liability company that invested in the third-party Regulation D real estate offering, named only fifteen investors: Lloyd and fourteen of his clients. It did not list Brown, Carson or Malloy. Moreover, when asked by the

broker-dealer offering the Regulation D investment whether Carson was an investor, Lloyd responded that Carson was not participating.

After the Commission's National Exam Program staff began looking into the Forest Conservation investments in approximately March 2013, Lloyd took further steps to conceal his scheme. In May 2013, Lloyd prepared and distributed to all seventeen of his clients (including the four who also were formal advisory clients) and to himself individual IRS Schedule K-1s that were misstated. To the three tax-planning clients whose money he stole, Lloyd gave Schedule K-1s that allocated a tax deduction that none of the three clients had earned because their funds were not used to acquire ownership interests in Forest Conservation 2012 in their names, they were not listed on the Forest Conservation 2012 Operating Agreement as members, and they were never identified to, or approved by, the broker-dealer handling the Regulation D offering as accredited investors. To the remaining fourteen clients, Lloyd sent Schedule K-1s that understated the deductions that they should have earned—a result of Lloyd having to allocate across all seventeen clients and himself an aggregate tax deduction from the third-party issuer that in actuality was based on Lloyd's use of only fourteen clients' funds, plus his own falsely inflated contribution, to purchase units in the offering.

As a result of this misconduct, Lloyd violated Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act").

II. FACTS

A. Introduction

In 2011 and 2012, Paul Edward "Ed" Lloyd, Jr. ("Lloyd"), a certified public accountant and tax-planner, and, until March 2013, a registered representative and associated person of LPL Financial, LLC ("LPL"), a broker-dealer and investment adviser registered with the Securities and

Exchange Commission (the "Commission"), created three free-standing LLCs (the "Forest Conservation entities"), which he named Forest Conservation 2011, Forest Conservation 2012, and Forest Conservation 2012 II, respectively (T. 692 – 698, 717, 761 – 762, and 886).[1]

For each of the Forest Conservation entities that he created, Lloyd solicited his tax and/or LPL investment advisory clients to contribute funds that Lloyd pooled to enable the Forest Conservation entities to purchase membership units in real estate offerings made by third-party entities. (Ex. 121, 122, 123). The third-party entities, known as Maple Equestrian, Piney Cumberland Holdings and Meadow Creek, filed Forms D with the Commission (Ex. 151, 152, 153) and sold real-estate equity membership units to accredited investors through a broker-dealer known as Strategic Financial Alliance ("SFA"). (Ex. 22, 55, 56, 99).

In or around December 2011, Lloyd pooled funds from his tax and advisory clients and bought $377,480-worth (a 20 percent ownership interest) of membership units through Forest Conservation 2011, LLC in the Maple Equestrian offering. (Ex. 121, 122). Between August 2012 and December 2012, Lloyd pooled funds from seventeen of his tax and advisory clients and himself and bought $543,552-worth (a 23.76 percent ownership interest) of membership units through Forest Conservation 2012, LLC in the Piney Cumberland Holdings offering (T. 184, Ex. 81, 123). Finally, in or around December 2012, Lloyd pooled funds from his clients to purchase $164,220-worth of membership units through Forest Conservation 2012 II, LLC in the Meadow Creek offering. (Ex. 123).

In each case, after the offerings closed and all units were sold, the Forest Conservation entities held equity membership units in third-party entities that held or planned to acquire a controlling interest in other entities with land as their primary asset. (T. 141, 150, 151, 447, 488,

[1] The transcript of the trial will be identified as "T. __". Exhibits for the Division will be identified as "Ex. __", and for Lloyd as "R. __".

495 and Ex. 22, 55, 56). Once the offerings closed, the managers of the third-party entities proposed possible uses for the land to the members, such as a conservation easement allowing for the preservation of the land, or investment development through housing construction. (Ex. 25, 94, 95, 106, 107). The third-party entities were under no obligation to grant a conservation easement for any interest in land they acquired. (T. 473, 474 and Ex. 22, 55, 56).

The conservation easement option was ultimately voted for by Lloyd as manager of the Forest Conservation entities (Ex. 29, 93, 108), and by a majority of the other members of the third-party entities, which ultimately generated charitable tax deductions that were approximately 4.25 times the value of the membership units sold. (T. 128, 454, 455, 481, 493 and Ex. 8, 27, 121, 122, 123). After the easements were granted, the third-party entities selling membership units issued Internal Revenue Service (IRS) Schedule K-1s to the Forest Conservation entities listing the singular tax deduction for each pooled investment by each Forest Conservation entity. (T. 483, 493 and Ex. 28, 129). Lloyd then apportioned the tax deductions earned among the Forest Conservation investors on a *pro rata* basis, resulting in individual tax reductions that significantly exceeded the amount of money investors had contributed to purchase the membership units in the first place. (Ex. 122, 128). Lloyd did not disclose his involvement with the Forest Conservation entities to LPL. (T. 329 – 331, 748).

B. The Forest Conservation 2012 Fraud

In 2012, SFA registered representative Nancy Zak ("Zak") informed Lloyd that SFA had "instituted a new policy of not allowing LLC's to invest in our projects without special permission." (Ex. 44). In an email, Zak informed Lloyd that any LLC that he formed to pool investor funds in 2012 could not charge management fees and that he needed to provide SFA with client account forms for all 2012 investors so SFA could ensure that each person was an accredited

investor. (T. 152-154, Ex. 44). In the fall of 2012, Zak's office informed Lloyd of a new real estate-related offering by Piney Cumberland Holdings, for which SFA was the broker. (Ex. 56). Piney Cumberland Holdings sought to acquire a controlling interest, through the raising of investor funds, in a tract of undeveloped land in Tennessee, owned by Piney Cumberland Resources (T. 154-156, Ex. 56). All investors, including those participating through an LLC, would need to be accredited investors which would enable the Piney Cumberland Holdings offering to qualify under the Regulation D exemption from registration with the Commission (T. 163 – 164, Ex. 76, 180).

Lloyd created Forest Conservation 2012, LLC and solicited his advisory and tax clients to contribute investments so that Forest Conservation 2012 could buy units in the Piney Cumberland Holdings offering. (T. 761, 762, 766, 767, and Ex. 128). On December 7, 2012, Lloyd deposited $16,802 of his own funds into the Forest Conservation 2012 bank account. (Ex. 82). The deposit was the last bank account deposit that Lloyd made from individuals who contributed funds to Forest Conservation 2012 (Lloyd deposited funds from his seventeen clients between October 1, 2012, through December 4, 2012) (Ex. 123). On December 10, 2012, Lloyd advised SFA that the amount of his personal investment in Forest Conservation 2012 was $41,052. (T. 543, 544, and Ex. 88). The difference between Lloyd's actual deposit and the amount he claimed to SFA as his personal investment was $24,250. (T. 911, Ex. 187).

On December 7, 2012, Lloyd wire transferred $543,552 to the escrow account for Piney Cumberland Holdings (as opposed to the total amount of $649,302 that Forest Conservation 2012 raised, consisting of $632,500 from his seventeen clients and $16,802 from Lloyd himself) (T. 174 – 175, Ex. 81). Although he collected funds from seventeen clients and himself, including four of his formal LPL advisory clients (Vernon "Ray" Branch, Timothy Goss, Leslie "Lee" Powell and Larry Price), on December 7, 2012, Lloyd provided SFA with a Forest Conservation 2012

Operating Agreement that listed himself as the only member holding 100 percent of the ownership interests (T. 181, Ex. 86). When SFA told Lloyd that he needed to disclose the names of all investors in the Forest Conservation 2012 Operating Agreement, Lloyd, on four occasions beginning on December 10, 2012, provided SFA with Operating Agreements and other paperwork that only contained the names of fifteen investors (fourteen investors plus himself), instead of the full list of eighteen people who actually contributed money to Forest Conservation 2012 (T. 183 – 190, Ex. 88, 90, 91 191). Each of the fourteen listed client investors was noted by Lloyd on the Operating Agreements that he sent to Zak as having a percentage of ownership in Forest Conservation 2012 based on that individual's entire investment (the full check amount *minus no fees for 2012*) which mirrored each person's percentage of contribution to the $543,552 wired to Piney Cumberland Holdings. Lloyd's percentage of ownership on a schedule he sent to Zak, 7.55 percent, was based on his alleged $41,052 contribution to the $543,552 wire amount, even though his actual contribution of $16,802 in non-misappropriated funds represented only 3.09 percent of $543,552 (T. 187, 188, Ex. 90, 123).

On December 11, 2012, Lloyd certified in writing that the final Operating Agreement that he provided to SFA, which contained a list of fifteen people he identified as members of Forest Conservation 2012, was a true, complete and correct copy of the Agreement (T. 191 – 194, 467, Ex. 187, 190, 191). Once the certified Operating Agreement was approved by SFA and by the closing attorney who handled the Piney Cumberland Holdings offering, the offering closed (T. 471-472). However, Lloyd never disclosed the names of three other clients who had already given money to the Forest Conservation 2012 bank account – Christopher Brown, Michael Malloy and James "Rusty" Carson – in the four Forest Conservation 2012 investor lists that he provided to SFA (T. 187-194, Ex. 88, 90, 91, 191).

Lloyd deposited the checks he received from Brown, Malloy and Carson into the Forest Conservation 2012 bank account on the following dates: the $50,000 Brown check on October 1, 2012; the $50,000 Malloy check on November 14, 2012; and the $30,000 Carson check on December 4, 2012 (T. 369, 370, and Ex. 47, 59, 77, 187). The total amount of money Lloyd received from Brown, Malloy and Carson was $130,000. (Ex. 187). Furthermore, SFA only received finalized accredited investor paperwork for Lloyd and the fourteen other members whom Lloyd listed on the Forest Conservation 2012 Operating Agreements and investor lists that he submitted to SFA[2] (not including Brown, Malloy and Carson). (Ex. 88, 90, 91, 191).

Lloyd wire-transferred funds from the Forest Conservation 2012 bank account to Piney Cumberland Holdings on December 7, 2012. (Ex. 83). Lloyd also transferred the remaining funds in the account to entities that he or his wife owned and controlled, as follows: a $2,000 check to Corporate Solutions, Inc. on November 28, 2012; a $22,750 check to Benefit Administrative Services on December 20, 2012; a $22,000 check to Benefit Administrative Services on December 30, 2012; and a $59,000 check to Ed Lloyd and Associates, PLLC, on December 31, 2012. (Ex. 67, 102, 110 and 109). The total amount of these checks was $105,750. (Ex. 187). That amount, plus the $24,250 fraudulent increase in his personal investment in Forest Conservation 2012, equals $130,000, the precise amount of money that Lloyd received from Brown, Malloy and Carson, but failed to disclose to SFA. (Ex. 187).

Although Lloyd never provided any accredited investor paperwork to SFA for Brown or Malloy, he initially provided incomplete accredited investor paperwork to SFA for Carson. (Ex. 79). When Zak sent an e-mail to Lloyd requesting additional information about Carson, including a sample "Form 407" letter for Carson's securities employer to complete indicating that it was

[2] The finalized accredited investor paperwork submitted for all investors listed their primary investment goal as "Real Estate Investment" (T. 141-147, 169-174 and Ex. 23, 172, 184).

aware of Carson's investment (Ex. 193), Lloyd responded with an e-mail to Zak saying that Carson was "OUT" (capitalization in original). (Ex. 84) When Zak followed-up with an e-mail to Lloyd to confirm that "Carson is not participating, correct?", Lloyd responded with an e-mail that said "Correct." (Ex. 84). Lloyd's e-mail exchanges with Zak occurred on December 7, 2012, only three days after his December 4, 2012, deposit of Carson's $30,000 check into the Forest Conservation 2012 bank account, and three days prior to advising SFA that the amount of his personal contribution was $41,052. Lloyd did not provide finalized accredited investor paperwork to SFA for Carson. As Lloyd explained at the hearing, Lloyd knowingly and intentionally took Carson out of the Forest Conservation 2012 offering and kept Carson's money. (T. 815, 912-913, 921).

C. Lloyd's Cover Up

Although Lloyd claimed that his failure to advise SFA that Brown, Malloy and Carson were investors in Forest Conservation 2012 was due to a "scrivener's error" on his part (Ex. 150), the evidence introduced during the hearing conclusively established otherwise. Indeed, as Lloyd conceded on cross examination, he intentionally: (a) excluded Carson from participating in Forest Conservation's 2012 investment in Piney Cumberland Holdings; (b) failed to tell Carson that he had done so; (c) retained Carson's $30,000 investment nonetheless; and, (4) provided Carson with a K-1 indicating that Carson was a member of Forest Conservation 2012, when Lloyd plainly knew, and previously admitted and confirmed to Zak, that Carson was not (T. 815, 912-913, 921). Thus, Lloyd's failure to include Carson as a member of Forest Conservation 2012 was not a "scrivener's error" by him.

Furthermore, Lloyd provided false information to SFA from the outset of his relationship with the entity. With respect to both the Maple Equestrian (Forest Conservation 2011) and Piney Cumberland Holdings (Forest Conservation 2012) offerings, Lloyd provided false accredited

investor paperwork to SFA in which he claimed that he did not work in the securities industry or possess investment experience, in a successful effort to conceal his involvement in the Forest Conservation entities from LPL (T. 158-161, 748, and Ex. 75, 174, 175).[3]

Lloyd's claim of a "scrivener's error" with respect to Brown and Malloy strains credulity. Lloyd first discussed an investment in Forest Conservation 2012 with Jennifer Brown, Chris Brown's wife, prior to the date of the Browns' August 30, 2012, check for $50,000 to Forest Conservation 2012. (T. 976, 977). Moreover, Lloyd admitted that he and members of his staff had numerous encounters (e-mail, telephone, facsimile and meetings) over several months with Jennifer Brown, on behalf of her and her husband, Chris, and Amy and Mike Malloy, regarding their respective investments in Forest Conservation 2012. (T. 997 – 1002). To believe that Lloyd, a professional and seemingly competent CPA for many years, who had previous experience with the 2011 Maple Equestrian offering, somehow forgot the participation of one of his other clients, let alone *two* of them, who both recently tendered $50,000 checks to him, is preposterous.

Lloyd's claim of a "scrivener's error" is further belied by his conduct during his meeting with members of the Commission staff from the National Exam Program in March 2013, three months after he concluded the investment by Forest Conservation 2012 in the Piney Cumberland Holdings offering. In response to the Exam staff's request for documents, Lloyd did not provide the Exam Program with the revised Forest Conservation 2012 Operating Agreement that he provided to SFA on multiple occasions in December 2012. (Ex. 123). To have done so would have revealed obvious discrepancies between that Operating Agreement, which did not include Brown, Malloy and Carson as investors, and the bank records the Exam staff also requested from Lloyd,

[3] If Lloyd admitted that he worked in the securities industry, SFA would have required him to obtain a "Form 407" letter from LPL, and LPL would have been aware of his involvement in the Forest Conservation entities (T. 160, 748), which, according to LPL branch examiner Erin Dethlefsen's testimony, violated various provisions of its compliance manual. (T. 307-323, Ex. 154, 155.)

which plainly showed that Lloyd previously deposited Brown's, Malloy's and Carson's investment checks into the Forest Conservation 2012 bank account (T. 575-578 and Ex. 123).

Rather, Lloyd, in a March 2013 letter from his attorney, intentionally provided the Exam Program with the Operating Agreement that falsely listed him as the sole member of Forest Conservation 2012, and which had previously been rejected by SFA just three months earlier. (T. 575 and Ex. 89, 123). Lloyd also provided the Exam staff with a list of eighteen investors in Forest Conservation 2012 (including Brown, Carson and Malloy), seventeen of whom were his clients and all of whom he now claimed had been charged a tax planning fee to participate. (Ex. 123).

Although Lloyd previously documented the fees he charged to Forest Conservation 2011 investors in writing in connection with the Maple Equestrian offering (Ex. 2, 3, 4, 5, 156), he never did so with respect to any of the Forest Conservation 2012 investors in the Piney Cumberland Holdings offering. (T. 1007 – 1008). Indeed, Lloyd's March 2013 letter to the Exam Program was the first time any fees were ever documented in writing for Forest Conservation 2012 investors. (T. 1007 – 1008). Also, the fees which Lloyd listed in his March 2013 letter for Forest Conservation 2012 investors varied by investor (ranging between 14 percent and 21 percent of the total check amounts provided by them (Ex. 123)), unlike the $4,500 fee he previously charged to most of the Forest Conservation 2011 investors for the Maple Equestrian offering (though some received invoices for $5,000 in fees for 2011). (T. 581 and Ex. 2, 3, 4). Lloyd's purported fees to Forest Conservation 2012 investors totaled $105,750 – the exact amount of the four checks he wrote from the Forest Conservation 2012 bank account to his and his wife's businesses in late 2012. (Ex. 187).

Lloyd also provided documents to the Exam Program that listed his personal investment in Forest Conservation 2012 as $16,802, the amount he actually deposited into the Forest

Conservation 2012 bank account, thereby abandoning the $24,250 of stolen funds he claimed three months earlier when he told SFA that his personal investment was $41,052 (T. 578 and Ex. 123).

Lloyd provided other false and inconsistent information to members of the Exam Program during his meeting with them at his LPL branch office in March 2013. He did not reveal that he was involved in the Forest Conservation entities as an outside business activity until he was confronted with it by the Exam staff (thereafter, Lloyd admitted to the Exam staff that he did not disclose his involvement in the Forest Conservation entities to LPL). (T. 554-555, 561).[4] He falsely claimed that none of the Forest Conservation investors was an LPL advisory client (T. 556, 573, 574). Lloyd also falsely claimed that Forest Conservation 2011 had a bank account in its own name at BB&T (T. 559, 560, 571). Lloyd further said that all of the funds he raised from his clients went towards their investments, which was consistent with the "amount of purchase" figures he reported for them on the accredited investor paperwork that he previously submitted to SFA, but inconsistent with the position he subsequently advanced in his letters to the Exam Program (T. 558). John Adams, one of the members of the Exam staff who met with Lloyd, also testified that Lloyd's purported fees for Forest Conservation 2012 investors substantially exceeded the amount of commissions that were normally charged to investors in other private placement cases. According to Adams, such fees were generally in the 7 percent to 8 percent range, and never more than 10 percent (T. 584-585).

Lloyd's cover-up did not end there. During his sworn investigative testimony, Lloyd testified that he did not know *why* the list of Forest Conservation 2012 investors that he gave SFA on four occasions in 2012 contained fifteen names but the list he gave the Exam staff in March 2013 had eighteen names. (Ex. 144). Lloyd also could not explain *why* he told SFA he was

[4] Lloyd also concealed his involvement in the Forest Conservation entities as an outside business activity from LPL branch examiner Erin Dethlefsen during her February 2013 branch examination of his LPL office (T. 329-331).

personally investing $41,052 in Forest Conservation 2012 but later only claimed $16,802 to the Exam Program, or account for the difference between those amounts.[5] (T. 423 – 430, Ex. 144).

After Lloyd became aware that the Exam Program was looking into his Forest Conservation entities in March 2013, he took additional steps to conceal his scheme. Specifically, after Forest Conservation 2012 received its tax deduction based on its ownership interest in Piney Cumberland Holdings, Lloyd prepared in May 2013 and distributed to all seventeen of his clients (including the four, at least, who also were formal advisory clients) and to himself individual IRS Schedule K-1s that were misstated. To the three tax-planning and prospective advisory clients whose money he stole (Brown, Malloy and Carson), Lloyd gave Schedule K-1s that allocated a tax deduction that none of them had earned because their funds were not used to acquire ownership interests in Forest Conservation 2012 in their names, they were not listed on the Forest Conservation 2012 Operating Agreement as owning any interests in the entity, and they were never identified to, or approved by, SFA as accredited investors. (Ex. 88, 90, 91, 123, 128, 191). To the remaining fourteen clients, Lloyd sent Schedule K-1s that understated the deductions that they should have earned—a result of Lloyd having to allocate across all seventeen clients an aggregate tax deduction from Piney Cumberland Holdings that in actuality was based on Lloyd's use of only fourteen clients' funds, plus his own falsely inflated contribution, to purchase membership units in Piney Cumberland Holdings. (Ex. 123). As a result, these fourteen clients – including the four formal advisory clients (Branch, Goss, Powell and Price) and the other ten tax and prospective advisory clients – should have received larger tax deductions than they ultimately acquired. (Ex. 88, 90, 91, 123, 128, 187, 191)

[5] Lloyd also failed to completely list his employment activities on his Commission questionnaire, omitting his approximately 13 years-worth of work in the securities industry for three different entities, and the various for-profit businesses that he established over the years (T. 698-702, 704-710, 1035-1045).

Further, when the Commission issued document subpoenas to Lloyd's clients during its investigation, Lloyd fed them an after-the-fact story about the "fees" they were supposedly charged. (T. 426 – 430, Ex. 144 at page 126). Lloyd testified that he "reminded" his clients about the fees he purportedly charged them when he spoke to them after they received their subpoenas because they would not have remembered the fee amounts on their own.[6] He further admitted that he assisted his clients with the language used in their respective cover letters to the Commission, including the fee amounts he purportedly charged them. Lloyd's cover up effort fell flat at the hearing in this matter, as some clients called by Lloyd could not recall the fees that Lloyd now argues he charged to them for Forest Conservation 2012.[7]

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[6] Lloyd testified under oath in this matter that after his clients received document subpoenas from the Commission concerning the offering, he "had to explain to them … what the contribution amount was. I had to explain the whole process to them. It had been over a year or so. They don't remember those details." Ex. 144, p. 126.

[7] Jennifer Brown (wife of Chris Brown) and Dennis Hall testified during the hearing that they could not recall any fee amount for Forest Conservation 2012. Brown testified that there was no discussion of any fee amount with Lloyd for Forest Conservation 2012 (T. 976, 977), and Hall testified that he could not testify in 2015 that he knew truthfully at the time whether his check to FC 2012 included a fee to Lloyd (T. 1173, 1174). Leslie "Lee" Powell testified that he also participated in the 2011 Maple Equestrian offering, for which written documentation existed showing that he was charged a $4,500 fee by Lloyd. Powell testified that, while "I don't recall specifically off the top of my head" what the fee amount was for Forest Conservation 2012, "I would say [it was] between 4 and 5,000…." (T. 640, 641). Powell further testified that Lloyd's reported fee of $8,500 for Forest Conservation 2012 seemed high to him (T. 670). While Vernon Branch, Timothy Goss, Ashley Shawn Hooks, Mark Losby and Larry Price recalled a fee amount for Forest Conservation 2012 during their hearing testimony, their recollections were compromised for various reasons, too. Hooks, who spoke to Lloyd after she received the Commission's document subpoena (T. 1064 - 1066), testified that she was told of the fee amount in an e-mail from Lloyd, even though there were no e-mails or contemporaneous writings of any kind from Lloyd indicating a fee for any Forest Conservation 2012 investors (T. 1072-1074). Losby also testified that he called Lloyd when he received the Commission's document subpoena and discussed it with him (T. 937, 938). Branch testified that he discussed the Commission's document subpoena with Lloyd and his counsel, including several conversations with Lloyd's counsel about fees (T. 1099, 1102). Larry Price testified that he spoke to Lloyd after he received the Commission's document subpoena, but could not recall their discussions. Although Lloyd performed Price's quarterly and yearly tax returns and his firm's tax returns for 10 or 11 years, and even though Lloyd regularly provided invoices to Price and his firm for those services, Price couldn't remember the amounts Lloyd charged for those services (in stark contrast to Forest Conservation 2012, when Price didn't receive an invoice from Lloyd yet said he could remember the fee amount) (T. 1111-1114, 1117, 1118). Timothy Goss testified that he had several conversations with Lloyd about the Commission's document subpoena. However, he said that his memory was "fuzzy" and he couldn't remember the specifics of those discussions (T. 1143, 1144). He also testified that his biggest concern was being audited (T. 1145).

After the Division issued its Wells Notice to Lloyd on June 17, 2014, Lloyd continued with his cover-up scheme by urging his clients to sign an Amended Operating Agreement, adding Brown, Malloy and Carson to a new investor list.[8] However, the basis for Lloyd's request was his now-discredited contention that he previously failed to include Brown, Malloy and Carson as investors due to a "scrivener's error".[9] This was not truthful, as Lloyd explained at the hearing that he intentionally removed Carson from the investor lists. (T. 815, 816, 912, 913). Finally, in preparation for the hearing in Charlotte, Lloyd convinced some, *but not all*, of his clients to sign affidavits saying that they received the outcome they always expected from Forest Conservation 2012 -- the outcome of Lloyd telling them what they got, even though he admitted in his sworn testimony that his clients could not remember such details and he had to remind them -- which, again, was predicated upon Lloyd's knowingly false explanation to his clients of a "scrivener's error." (R. 39). Brown and Malloy, who each provided $50,000 checks to him (a total of $100,000) did not provide signed affidavits for Lloyd. (Ex. 47, 59, and R. 39).

III. LEGAL ANALYSIS

Lloyd violated Sections 206(1), 206(2) and 206(4) of the Advisers Act through a knowing fraud. He defrauded the Forest Conservation 2012 fund, his advisory client, by advising it not to invest the full amount of money that it had raised. (Ex. 83, 87). He also defrauded fourteen investors in Forest Conservation 2012 by not basing their tax reductions on the full amounts they invested and acquired in Piney Cumberland Holdings ownership interests, including four of his

[8] Ashley Shawn Hooks testified that Lloyd's counsel told her that she needed to sign the Amended Operating Agreement so that she might not have to appear in court for the hearing in this matter (T. 1069).

[9] Moreover, Lloyd's attempted cover-up continued during the hearing when he claimed, for the first time, that he removed Carson as a Forest Conservation 2012 investor because he thought it would have been difficult to obtain a "Form 407" letter from Carson's securities employer in time (Lloyd conceded that he made no effort to obtain it). (T. 808 – 815). However, Lloyd was at a loss to explain why, even if he couldn't have obtained a letter in time, he didn't include Carson as a Forest Conservation 2012 II investor in the Meadow Creek offering, which did not close until the next week of December 2012 after the Forest Conservation 2012 offering closed. (T. 923).

formal LPL advisory clients (Branch, Goss, Powell and Price), as well as the other ten prospective advisory clients. (Ex. 88, 123, 128, 187). Finally, he defrauded Brown, Malloy and Carson, also prospective advisory clients, whom he advised to invest in Forest Conservation 2012 and the Piney Cumberland Holdings offering, but whose money he misappropriated before he later provided them with false K-1s based on ownership interests in Forest Conservation 2012 which they never acquired. (Ex. 123, 128, 187).

A. Lloyd Violated the Prohibited Transactions Provisions of the Advisers Act

Section 206(1) of the Advisers Act makes it unlawful for an investment adviser to employ any device, scheme or artifice to defraud any client or prospective client. Section 206(2) makes it unlawful for an investment adviser to engage in any transaction, practice or course of business that operates as a fraud or deceit upon any client or prospective client. Both Sections 206(1) and 206(2) of the Advisers Act apply to all investment advisers meeting the statutory definition, regardless of their registration status. Section 206(1) requires a showing of scienter; Section 206(2) does not. SEC v. Steadman, 967 F.2d 636, 641 n.3, 643 n.5 (D.C. Cir. 1992). Section 206(4) of the Advisers Act prohibits investment advisers from engaging in any "act, practice or course of business which is fraudulent, deceptive, or manipulative."

An investment adviser is defined by Section 202(a)(11) of the Advisers Act as someone who in return for compensation, engages in the business of advising others as to the advisability of investing in, purchasing, or selling securities. Lloyd has admitted that two of the investors in Forest Conservation 2011 were LPL advisory clients (Ex. 121), that four of the Forest Conservation 2012 investors were LPL advisory clients (Vernon "Ray" Branch, Timothy Goss, Leslie "Lee" Powell and Larry Price) (Ex. 123), and that he was paid for his efforts (Ex. 121, 122,

123). Furthermore, Ashley Shawn Hooks, another Forest Conservation 2012 investor, testified during the hearing that she was also one of Lloyd's LPL advisory clients (T. p. 1076).

Lloyd's individual role as an unregistered investment adviser – activity which was hidden from LPL – is evidenced by his creation, identification and recommendation of the Forest Conservation 2012 offering to his pre-existing and prospective advisory clients (*i.e.*, Lloyd alone advised his clients to invest in Forest Conservation 2012). (T. 762 and Ex. 123) Lloyd also served as an investment adviser to the Forest Conservation 2012 fund, advising it on which securities to purchase and how much, resulting in his trading of the fund's assets in exchange for the purchase of membership units in the real estate equity offering by Piney Cumberland Holdings (Ex. 83, 87, 187). The subsequent misappropriation of investor funds by Lloyd from the Forest Conservation 2012 account served as his compensation for advising the Forest Conservation 2012 fund and his clients. (T. 815, 912, 913, 1027, and Ex. 187).

Lloyd violated Sections 206(1), Section 206(2) and Section 206(4) by misappropriating the assets of his client, the Forest Conservation 2012 fund, which he advised on how to invest. (Ex. 187). Instead of advising the fund to use all its assets to acquire membership units in Piney Cumberland Holdings, Lloyd misappropriated $130,000 which had been provided by Brown, Carson and Malloy, collectively, for Forest Conservation 2012 to use in the acquisition of Piney Cumberland Holdings membership units. (T. 815, 912, 912, and Ex. 88, 90, 91, 123, 187). Further, pursuant to his cover-up scheme attempting to conceal the misappropriation, Lloyd also violated the prohibited transactions provisions of the Advisers Act by making misrepresentations and omissions of material fact to his four formal advisory clients and ten other prospective advisory clients participating in the Forest Conservation 2012, LLC concerning, among other things, the amount each individual was investing and the size of each individual's *pro rata* ownership interest

in Forest Conservation 2012 (Ex. 53, 54, 61, 88, 90, 91, 123, 128, 187, 191). As noted above, Lloyd acted with the required scienter to establish a charge under Section 206(1). (T. 815-823, 912, 913, 921, 922).

Lloyd established, employed and operated a scheme or business through interstate commerce using Forest Conservation 2012 to offer or sell securities to individuals in different states, and fraudulently advised Brown, Carson and Malloy that their funds would be used on their behalf in order to acquire membership interests in the real estate-related offerings (T. 815, 912, 913, 921, 922, and Ex. 88, 90, 91, 123, 128, 187, 191). As such, Lloyd's advisory client, Forest Conservation 2012, was defrauded of funds that were intended for use in the Piney Cumberland Holdings investment. (Ex. 187). Lloyd never gave SFA finalized accredited investor paperwork for the three clients (Brown, Carson and Malloy) whose money he stole, and, therefore, Lloyd kept them from participating in the offering and from acquiring membership interests in the Forest Conservation 2012 entity. (T. 183, 184, 189, 191, 194, 195, and Ex. 88, 90, 91, 191). As noted above, when Zak asked Lloyd whether Carson was participating in the Forest Conservation 2012 offering, Lloyd responded to Zak that Carson was "OUT." (Ex. 84) Further, Lloyd knew that he had collected a total of $632,500 from seventeen clients for participation in Forest Conservation 2012. (Ex. 123). However, he only advised the entity to use $543,552 to buy Piney Cumberland Holdings units. (Ex. 83, 87, 123). Lloyd ultimately tried to cover up his scheme by issuing Schedule K-1s to all seventeen clients, thereby diminishing the ownership interests owed to the fourteen investors known to SFA, including the four formal LPL advisory clients and all the prospective advisory clients (Ex. 123, 128).

Lloyd's misstatements and omissions, described above, were material because they concerned the very nature of the investment offered and sold by Lloyd to individuals who gave

funds to Forest Conservation 2012. SEC v. Research Automation Corp., 585 F.2d 31, 35-36 (2d Cir. 1978) (misleading statements and omissions concerning the use of money raised from investors are material as a matter of law). Through his admission to the Exam staff that the contributions he received from investors were being fully applied towards acquiring ownership interests for them in the real estate offerings (T. 558), to the accredited investor paperwork he submitted to SFA which indicated that the clients' "amount of purchase" reflected the full amount of their investments (Ex. 184), through his failure to communicate in writing to Forest Conservation 2012 investors, prior to investing, that he would claim a portion of their contribution checks as his tax planning fees (T. 1007 – 1008, and Ex. 53, 54, 61), and through his failure to include Brown, Carson and Malloy as contributors to the Forest Conservation 2012 fund (Ex. 88, 90, 91, 191), Lloyd made misleading statements and omissions that would have been have been significant in the deliberations of a reasonable investor. SEC v. Reynolds, 2010 WL 3943729, *3 (N.D. Ga. 2010).

As a result, Lloyd violated the prohibited transactions provisions of the Advisers Act by employing a device, scheme or artifice to defraud his clients or prospective clients, by engaging in a transaction, practice or course of business which operated as a fraud or deceit on his clients or prospective clients, and by engaging in an act, practice or course of business which was fraudulent, deceptive or manipulative.

B. The ALJ Erred in Granting Partial Summary Disposition In Favor of Lloyd

The ALJ initially assigned to this matter granted partial summary disposition in favor of Lloyd on the Division's claims under Sections 15(a) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder, and Section 17(a) of the Securities Act, and Advisers Act Rule 206(4)-8. The ALJ reasoned that the investments that Lloyd offered (*i.e.* interests in the Forest Conservation entities

and the third-party real-estate offering entities) were not securities because they ultimately led to tax deductions which were noted as possible options at the outset. This ruling was erroneous. Moreover, the facts adduced at the hearing show that Lloyd violated these statutes.

1. The Forest Conservation Investments Offered by Lloyd Were Securities

The touchstone of any analysis as to whether a particular instrument is a security under Section 2(a)(1) of the Securities Act of 1933 ("Securities Act") and Section 3(a)(10) of the Securities Exchange Act of 1934 ("Exchange Act") is the substance rather than the form of the transaction, with an emphasis on economic reality. SEC. v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946); United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 848 (1975). Investment schemes may fall within several of the categories of instruments included within the definition of a security. Tcherepnin v. Knight, 389 U.S. 332, 339 (1967). The Howey court, *supra*, defined an investment contract as a contract, transaction or scheme whereby a person: (1) invests his money; (2) in a common enterprise; and (3) is led to expect profits solely from the efforts of the promoter or a third party. See also Robinson v. Glynn, 349 F.3d 166, 170 (4th Cir. 2003).

The first element of the Howey test, that a person must invest money, means "that the investor must commit his assets to the enterprise in such a manner as to subject himself to financial loss." SEC v. Pinckney, 923 F. Supp. 76, 80 (E.D. N.C. 1996), quoting Hector v. Wiens, 533 F.2d 429, 432 (9th Cir. 1976). Here, Lloyd solicited his tax and LPL advisory clients to contribute money to the Forest Conservation entities, promising them that they would receive a *pro rata* interest in the total membership units that the Forest Conservation entities obtained from third-party entities through the real estate investment offerings sold by SFA. (Ex. 5, 53, 54, 61, 121, 122, 123, 128, 156). Indeed, in his letters to the Examination staff in March 2013, Lloyd's counsel regularly referred to these transactions as "investments." (Ex. 121, 122, 123).

The offering summaries for the third-party entities selling membership units through SFA explained that their managers would recommend – *after the offering closed* -- to the members of each entity whether to pursue either an investment proposal, or, in the alternative, a conservation easement proposal. (Ex. 22, 55, 56). Further, the offering summaries explained that they were only available to accredited investors (Ex. 22, 55, 56), and the third-party entities were under no obligation to grant a conservation easement for any interest in land they acquired (Ex. 22, 55, 56). Because Lloyd's clients committed funds and subjected themselves to the risk of financial losses, the first prong of Howey is satisfied.

The second element of Howey – requiring a "common enterprise" – has been interpreted differently among the nation's circuit courts. The Fourth Circuit, where Lloyd resides and from where he offered and sold membership interests in third-party entities that held or planned to acquire real estate as their primary asset, has held that "horizontal commonality," whereby profits are distributed on a *pro rata* basis to investors whose assets were pooled together, is sufficient to show a common enterprise. Teague v. Bakker, 35 F.3d 978, 986 n. 8 (4th Cir. 1994); see also SEC v. Merklinger, 489 Fed. Appx. 937, 940-941 (6th Cir. 2012) (holding that the SEC sufficiently alleged that investments in an LLC constituted "securities" under federal securities fraud law where the SEC alleged that funds were pooled in a common bank account and used for the LLC's expenses and where the LLC principal represented the LLC as a passive investment for which investors could expect significant returns).

Here, there clearly was horizontal commonality between the investors who contributed funds to the Forest Conservation entities, as Lloyd's clients wrote checks to the bank accounts he identified (Ex. 121, 122, 123). Subsequently, Lloyd used those pooled funds to make purchases of ownership units in the Piney Cumberland Holdings, Maple Equestrian and Meadow Creek

offerings, respectively (Ex. 24, 83, 104). Lloyd's clients who held ownership interests in the Forest Conservation entities were entitled, based on their *pro rata* purchases of ownership interests, to any profits or losses achieved through the ownership purchases in the third-party entities, respectively (Ex. 121, 122, 123, 128). Further, investors in the Forest Conservation entities ultimately shared in the net profit they achieved through *pro rata* tax deductions that reduced their individual taxable income and led ultimately to a greater savings in taxes paid than the funds they initially invested. (Ex. 122, 128, 129).

Finally, the third element of Howey, that investors expected profits to come solely from the efforts of others, requires a court to examine "(1) that the opportunity provided to offerees tended to induce purchases by emphasizing the possibility of profits, (2) that the profits are offered in the form of capital appreciation or participation in earnings ..., and (3) that the profits offered would be garnered from the efforts of others." Teague, 35 F.3d at 987. Here, there were three ways in which Lloyd's clients could expect profits from the efforts of others. First, they reasonably expected profits from their participation in the Forest Conservation entities because the offering summaries explained that the third-party entities intended to acquire a controlling interest in *land* (*i.e.*, real property interests) which, under one scenario, could be developed for profit through the development and sale of residential lots (Ex. 22, 55, 56). Separately, Lloyd's clients also reasonably expected profits from the efforts of others because Lloyd induced his clients to invest in the Forest Conservation entities by emphasizing that each client would receive a tax deduction and corresponding decrease in income taxes owed of greater value than each client's initial investment[10], *i.e.*, a net profit earned through participation in the anticipated conservation

[10] Leslie "Lee" Powell, a CPA, testified that in return for a $60,000 contribution to Forest Conservation 2012, he would receive, under the conservation easement scenario, a charitable tax deduction that was "somewhere north of $240,000," resulting in a $95,000 tax savings for him (T. 615, 624-625, 629-631). He further testified that, based upon his

continued ...

easements (T. 761 and Ex. 54, 61).[11] Finally, even if the conservation easement option was selected by members, they would continue to retain a percentage ownership interest in the underlying real estate, which could be sold at a later date (T. 485).

Case law regarding the relationship between tax benefits and the existence of an investment contract has developed over the last several decades. In United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 853-58 (1975), the Supreme Court held that residents of a government-financed co-op building who bought "shares" in the co-op in exchange for residential space did not purchase "securities" under the Howey test because the residents purchased the shares for "personal consumption or living quarters for personal use" and "were attracted solely by the prospect of acquiring a place to live, and not by financial returns on their investments." Further, the Court held that mortgage interest paid by the residents, while deductible for the residents' tax purposes, did not constitute a "security" because such "tax benefits are nothing more than that which is available to any homeowner who pays interest on his mortgage." Id. at 855.

In 1986, the Supreme Court, in Randall v. Loftsgaarden, 478 U.S. 647, 667 (1986), held that "tax benefits" from an investment in a tax shelter were not to be used in calculating "actual damages," *i.e.*, the court did not reduce the investor's recovery by the tax benefits actually received from a *tax shelter investment* which involved fraud in the offering terms. The Randall case was a dispute concerning whether tax benefits would reduce an investor's recovery under a theory of

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investigation, he believed the IRS would view his contribution to Forest Conservation 2012 under the conservation easement scenario as a qualified conservation contribution, because it was a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes (T. 649, 650 and Ex. 194).

[11] Because the fortunes of Lloyd's clients were clearly interwoven with the efforts and successes of the Forest Conservation entities created, identified and managed solely by Lloyd, there also is vertical commonality. See, e.g., SEC v. Reynolds, 2010 WL 3943729, *3 (N.D. Ga. 2010) (finding vertical commonality established because investors "were dependent on [the promoter's] purported expertise in 'banking processes'," and the promoter claimed "the returns offered were possible because of [his] relationships with undisclosed banking partners").

rescission. However, Randall did not address the Howey analysis *in any way*. Case law before and after Randall has found that a "security" may exist in the form of tax benefits where promoters take sufficient steps to create the reasonable expectation of profits on the part of a purchaser. Newmyer v. Philatelic Leasing Ltd., 888 F.2d 385, 394 (6th Cir. 1989), cert. denied, 495 U.S. 930 (1990) (holding that tax benefits alone do not satisfy the "profit" element under Howey, but also finding a material question of fact existed as to whether a tax shelter involving leasehold interests of postage stamp printing plates was an investment contract under Howey, and observing in *dicta* that a trier of fact would likely examine the promoter's appraisals, offering memorandum and "glowing" description of the popularity of stamp collecting in determining whether a reasonable expectation of profits existed); see also Investors Credit Corp. v. Extended Warranties, Inc., 1989 WL 67739 at * 28 (M.D. Tenn. 1989) ("As to profits, tax benefits which are the dominant inducement for investing are properly considered to be profits in satisfaction" of the Howey test).

Regardless of whether the third-party entities ultimately chose to develop the land for profit or seek tax deductions through conservation easements, any such profits or tax deductions would be garnered by the efforts of others, *i.e.*, Lloyd, as manager of and investment adviser to the Forest Conservation entities, as well as by Piney Cumberland, Maple Equestrian and Meadow Creek. Any earnings expected, whether residential-lot sale profits, easement tax deduction net profits, or future sales of land profits, would come from the efforts of others, as Lloyd's clients' only meaningful role was to write checks and wait for their *pro rata* profit. Once Lloyd's clients provided their investment funds to the Forest Conservation entities, they had no role in the success or failure of the ventures. They were passive investors relying on the efforts of others to generate their profits. (Ex. 121, 123). See SEC v. Merklinger, 489 Fed. Appx. 937, 940-941 (6th Cir. 2012) (holding that the SEC sufficiently alleged that investments in an LLC constituted "securities"

under federal securities fraud law where the LLC principal represented the LLC as a passive investment for which investors could expect significant returns).

The Maple Equestrian, Piney Cumberland Holdings and Meadow Creek offerings were specifically "offered and sold in reliance on the exemptions from the registration requirements provided by" the Securities Act of 1933. (Ex. 22, 55, 56). Forms D were filed with the Commission for them. (Ex. 151, 152, 153). Lloyd used similar language on the face page of his Operating Agreements for the Forest Conservation entities. (Ex. 121, 123). The offerings were only available to accredited investors (T. 531, 532, and Ex. 22, 55, 56). When the subscriptions closed, conservation easements had *not* yet been proposed, voted upon, granted or filed for the underlying real estate (T. 473, 474, 502). At that time, the Forest Conservation entities owned membership interests in private securities offerings by third-party entities. (T. 473, 474, 502).

2. Lloyd Acted as an Unregistered Broker-Dealer

Section 3(a)(4) of the Exchange Act defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." The phrase "engaged in the business" connotes a regular participation in securities transactions and can be evidenced by such things as holding oneself out as a broker-dealer or receiving transaction-based compensation. See e.g. Massachusetts Fin. Servs., Inc. v. Sec. Investor Prot. Corp., 411 F. Supp. 411, 415 (D. Mass. 1976), aff'd, 545 F.2d 754 (1st Cir. 1976); SEC v. Hansen, 1984 WL 2413, at *10 (S.D.N.Y. 1984).

Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security without registering as, or associating with, a registered broker-dealer, unless such broker or dealer (1) is registered with the Commission in accordance with Section 15(b) of the Exchange Act; (2) in the

case of a natural person, is associated with a registered broker-dealer; or (3) satisfies the conditions of an exemption or safe harbor. SEC v. Martino, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003), aff'd, 94 F. App'x 871 (2d Cir. 2004). The registration exemption for associated persons is not available if an associated person engages in securities transactions that are not within the scope of his employment with the registered firm, and the registered firm is unaware of or has not approved of the associated person's involvement in the transactions. This practice is called "selling away." A registered representative who is selling away may be liable for violations of Section 15(a). See, e.g., SEC v. Ridenour, 913 F.2d 515, 517 (8th Cir. 1990) (bond salesman violated Section 15(a)(1) by engaging in a series of undisclosed, private securities transactions as part of private bond business of which registered firm had no knowledge or opportunity to supervise).

At the time of his fraud, Lloyd was a registered representative and an associated person of LPL, a broker-dealer and investment advisor registered with the Commission. (T. 277, 278, 329 – 331, 698). With regards to the Forest Conservation entities, Lloyd acted as a broker-dealer by: (1) actively soliciting and inducing individuals to invest in these Forest Conservation entities (Ex. 5, 51, 53, 54, 61); (2) requiring investors to pay him transaction-based compensation for the offerings in the case of Forest Conservation 2011 and 2012 II, respectively (Ex. 2, 3, 4, 121, 122), while misappropriating client funds as his compensation for Forest Conservation 2012 (T. 815, 912, 913 and Ex. 187); (3) handling investor funds in bank accounts which Lloyd controlled (Ex. 121, 122, 123); and (4) purchasing ownership units in the real estate offerings using the investors' pooled funds (Ex. 24, 83, 104). Lloyd testified that he created and sold investments in the Forest Conservation entities in 2011 and 2012, and then used the funds raised to purchase ownership units in the real estate offerings without informing or seeking approval from LPL. (T. 725 and Ex. 144 at pp. 72 - 75). As such, Lloyd was "selling away" from LPL in 2011 and 2012 and, therefore, was

engaged in securities transactions that were not within the scope of his employment with the registered firm, and LPL was unaware and did not approve of Lloyd's involvement in these transactions (T. 329 – 331). Lloyd received $31,500 in fees from the Forest Conservation 2011 offering participants and $35,780 in fees from Forest Conservation 2012 II participants. (Ex. 121, 122, 123). As a result, Lloyd violated Section 15(a) of the Exchange Act by acting as a broker-dealer without registration.

3. Lloyd Violated the Antifraud Provisions of the Securities and Exchange Acts

Section 17(a) of the Securities Act of 1933 (the "Securities Act") prohibits fraud in the offer or sale of a security by the use of interstate commerce or the mail. Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder prohibit fraud in connection with the purchase or sale of securities by use of interstate commerce or the mail. Specifically, Section 17(a), in the offer or sale of a security, prohibits: (1) employing any device, scheme or artifice to defraud; (2) obtaining money or property by means of making material misstatements of fact or omitting to state material facts; or (3) engaging in any transaction, practice or course of business which operates as a fraud or deceit.

Separately, Section 10(b) of the Exchange Act, in connection with the purchase or sale of securities, prohibits any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. Rule 10b-5, thereunder, prohibits: (1) employing any device, scheme or artifice to defraud; (2) making any untrue statement of a material fact or omitting to state a material fact; or (3) engaging in any act, practice or course of business which operates as a fraud or deceit. Further, to establish a violation of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the Commission must

prove scienter, defined as "a mental state embracing intent to deceive, manipulate or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n. 12 (1976). Violations of Sections 17(a)(2) and (a)(3) of the Securities Act may be established by a showing of negligence. SEC v. Morgan Keegan & Co., Inc., 678 F.3d 1233, 1244 (11th Cir. 2012).

Lloyd established and operated a scheme or business through interstate commerce using Forest Conservation 2012 to offer or sell securities to individuals in different states, and fraudulently declaring that the funds would be used on the individuals' behalf in order to acquire ownership interests in the real-estate-related offerings. (T. 962 – 965, and Ex. 47, 53, 59, 77, 121, 122, 123). Lloyd never gave SFA finalized accredited investor paperwork for the three clients (Brown, Carson and Malloy) whose money he stole, and, therefore, Lloyd kept them from participating in the offering and from acquiring ownership interests in the Forest Conservation 2012 entity. (T. 183, 184, 189, 191, 194, 195 and Ex. 88, 90, 91, 191). As noted above, Lloyd intentionally removed Carson as an investor in Forest Conservation 2012, although he never told Carson that he had done so and he kept Carson's contribution anyway. (T. 815, 912, 913). When Zak asked Lloyd whether Carson was participating in the Forest Conservation 2012 offering, Lloyd responded to Zak that Carson was "OUT." (Ex. 84). Lloyd ultimately tried to cover up his scheme by issuing Schedule K-1s to all seventeen clients, thereby diminishing the ownership interests owed to the fourteen investors known to SFA, and providing K-1s to three investors (Brown, Malloy and Carson) to which they were not entitled. (Ex. 123, 128, 187). As such, Lloyd evidenced a mental state embracing an intent to deceive, manipulate or defraud.

Lloyd also made material misstatements and omissions to clients. He told Brown, Carson and Malloy, respectively, that their funds were being used to acquire ownership interests in Forest Conservation 2012, but instead, Lloyd misappropriated their funds. (T. 962 – 965, Ex. 47, 59, 69,

70, 71, 74, 77, 78, 187). Lloyd also took steps to conceal that he had misappropriated $130,000 from these three tax-planning clients, deliberately hiding those individuals' funds from SFA. (Ex. 88, 90, 91, 191). Lloyd's misstatements and omissions, described above, were material because they concerned the very nature of the investment offered and sold by SFA to individuals who gave funds to Forest Conservation 2012. SEC v. Research Automation Corp., 585 F.2d 31, 35-36 (2d Cir. 1978) (misleading statements and omissions concerning the use of money raised from investors are material as a matter of law).

Further, Lloyd, through emails, informed investors who were approved as accredited investors in Forest Conservation 2012 that their entire contribution amounts were going toward acquiring ownership interests in the real estate offerings, and Lloyd did not communicate in writing to these individuals, prior to their investing, that he would be claiming a portion of their contribution checks as his tax-planning fees. (T. 965, 1173, and Ex. 53, 54, 61). These statements were all material as there is a substantial likelihood that such information about the actual amount used for contribution purposes would have been significant in the deliberations of a reasonable investor. Reynolds, 2010 WL 3943729 at *3. Again, Lloyd's actions evidence the requisite scienter that must be shown, as described above.

IV. RELIEF REQUESTED

A. Cease-and-Desist Order

Section 203(k) of the Advisers Act authorizes the Commission to enter an order requiring that any person that violated any provision of the Advisers Act or is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing such violation or any future violation of the same provision, rule or regulation. While there must be "some" risk of future violations, that risk:

> need not be very great to warrant a cease-and-desist order. Absent evidence to the contrary, a finding of violation raises a sufficient risk of future violation. To put it another way, evidence showing a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist.

In re KPMG Peat Marwick, LLP, 74 S.E.C. 357, 2001 WL 47245 at *24 (Jan. 19, 2001). When determining whether to impose a cease-and-desist order, the Court should also consider a range of traditional factors, including:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); see also In the Matter of Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976). No one criterion is dispositive.

Accordingly, based upon the evidence presented during the hearing and the Steadman factors, above, all of which weigh heavily against Lloyd, the Court should order Lloyd to cease and desist from committing or causing violations of or any future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act.

B. Disgorgement Plus Prejudgment Interest

Section 203(j) of the Advisers Act allows the Commission to enter an order requiring disgorgement, including prejudgment interest, in administrative proceedings in which the Commission may impose a money penalty. Section 203(k)(5) of the Advisers Act allows the Commission to enter an order requiring disgorgement, including prejudgment interest, in administrative proceedings in which the Commission may impose a cease-and-desist order.

In this case, Lloyd stole $130,000 from Brown, Malloy and Carson, his tax and prospective advisory clients, who were not listed on the Forest Conservation 2012 Operating Agreements he

provided to SFA as owning any interests in the entity, and who were never identified to, or approved by, SFA as accredited investors. He also provided Brown, Malloy and Carson with Schedule K-1s that allocated a tax deduction that none of them had earned because their funds were not used to acquire ownership interests in Forest Conservation 2012 in their names. Further, Lloyd tried to cover up the $130,000 misappropriation by claiming he had charged $105,750 in fees to his clients and by abandoning the $24,250 that he used to inflate his personal contribution. Thus, Lloyd should disgorge the $130,000 which he misappropriated.

Regarding prejudgment interest, Rule of Practice 600 specifies that it should begin on the first day of the month following each violation. 17 C.F.R. § 201.600. Under these facts, the Division suggests January 1, 2013, which is first day of the month after December 2012 during which Lloyd turned in paperwork to SFA which inflated his personal investment in Forest Conservation 2012 and omitted the $130,000 provided by Brown, Carson and Malloy. Using that date and the hearing date as the parameters, prejudgment interest equals $8,677.08.[12]

C. Civil Penalties

Section 203(i) of the Advisers Act allows the Commission to impose a civil penalty in proceedings instituted pursuant to Section 203(f) of the Advisers Act. Six factors are relevant to determining whether civil monetary penalties are in the public interest: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) direct or indirect harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. See Section 203(i) of the Advisers Act. "No all factors may be relevant in a given case, and the factors need not all carry equal weight." In the Matter of Robert G. Weeks, Admin. Proc. File No. 3-9952.

[12] For the Court's convenience, the Division is including a Prejudgment Interest Report supporting its calculation as Exhibit A to this Post-Hearing Brief.

Section 203(i) establishes a three-tier system for calculating the maximum penalty, each with a larger maximum penalty amount applicable to increasingly serious misconduct. In this case, second tier penalties are appropriate because Lloyd's conduct involves fraud and deceit. At the time of Lloyd's misconduct, the maximum second tier penalty for individuals was $65,000 "for each act or omission." 17 C.F.R. Pt. 201, Subpt. E, Tbl. IV. Under the facts of this case, the Division requests that the Court impose a civil penalty of $100,000, consisting of $10,000 for each of the three clients whose money Lloyd stole (Brown, Malloy and Carson), and who received K-1s from him that allocated tax deductions to which they were not entitled, and $5,000 for each of Lloyd's remaining fourteen clients, who received K-1s from Lloyd that understated the tax deductions they should have earned. See SEC v. Kenton Capital, Ltd., 69 F. Supp. 2d 1, 17 n.15 (D.D.C. 1998) (imposing separate penalty for each of the 12 investors whom the defendant defrauded).[13]

D. The Court Should Impose an Associational Bar Against Lloyd

Section 203(f) of the Advisers Act authorizes the Commission to, among other things, bar a person who was, at the time of the misconduct associated with an investment adviser, from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization ("associational bar") if (a) the Commission finds that such a remedy is in the public interest and (b) has willfully violated any provision of, *inter alia*, the Securities Act, Exchange Act or Advisers Act. As set

[13] The Court could view the $130,000 that Lloyd misappropriated as a substantial pecuniary gain so as to justify third tier penalties under Section 203(i)(2)(C). See, e.g., Montford and Company, Inc., et al., Advisers Act Release No. 3829, 2014 WL 1744130 at * 24 and n.208 (May 2, 2014) (finding undisclosed payment of $210,000 (or even $170,000) to be a substantial pecuniary gain warranting a third tier penalty). While the Division has made a more conservative recommendation, this Court is not bound the by the Division's suggested penalty amount. Id. at * 25 ("in determining the penalty necessary to protect the public interest, we are not bound by the amount the Division requested.")

forth above, the established criteria for determining whether a sanction under this statute is in the public interest include:

> the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); see also In the Matter of Richard C. Spangler, Inc., 46 S.E.C. 238, 254 n.67 (1976).

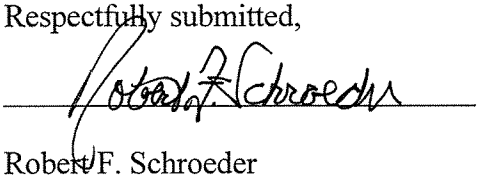
Here, Lloyd acted with a high degree of scienter. His fraudulent conduct was planned, consistent, and recurrent. He has shown no remorse whatsoever. Instead, he took great efforts to conceal his fraud, fabricating a story that the misappropriated funds were fees to which he was entitled. Given his continuing lack of candor and that his current occupation will present him with opportunities for future violations, the Division recommends that Lloyd be barred from associating with any investment adviser. See Montford and Company, Inc., et al., Advisers Act Release No. 3829, 2014 WL 1744130 (May 2, 2014) (associational bars imposed for failure to disclose conflict of interest).

V. CONCLUSION

For the foregoing reasons, and based upon the evidence presented by the Division at the hearing, the Court should find that Lloyd violated the Advisers Act statutory provisions set forth in the Order Instituting Administrative and Cease-and-Desist Proceedings and grant relief as requested herein.

This 1st day of May 2015.

Respectfully submitted,



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Brian M. Basinger
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Securities and Exchange Commission
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EXHIBIT

A

U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

Paul Edward "Ed" Lloyd, Jr. - Prejudgment Interest on Disgorgement

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				$130,000.00
01/01/2013-03/31/2013	3%	0.74%	$961.64	$130,961.64
04/01/2013-06/30/2013	3%	0.75%	$979.52	$131,941.16
07/01/2013-09/30/2013	3%	0.76%	$997.69	$132,938.85
10/01/2013-12/31/2013	3%	0.76%	$1,005.24	$133,944.09
01/01/2014-03/31/2014	3%	0.74%	$990.82	$134,934.91
04/01/2014-06/30/2014	3%	0.75%	$1,009.24	$135,944.15
07/01/2014-09/30/2014	3%	0.76%	$1,027.96	$136,972.11
10/01/2014-12/31/2014	3%	0.76%	$1,035.73	$138,007.84
01/01/2015-02/28/2015	3%	0.48%	$669.24	$138,677.08

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
01/01/2013-02/28/2015	**$8,677.08**	**$138,677.08**

CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the **DIVISION OF ENFORCEMENT'S POST-HEARING BRIEF** by UPS overnight mail and electronic mail, to the individuals identified below:

Honorable Cameron Elliot
Administrative Law Judge
Securities and Exchange Commission
100 F Street NE
Room 2557
Washington, D.C. 20549-2557

Secretary Brent J. Fields (original and three copies)
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

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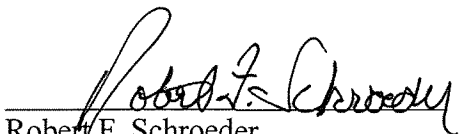
William Woodward Webb, Jr.
The Edmisten, Webb & Hawes Law Firm
127 West Hargett Street, Suite 104
Raleigh, North Carolina 27601

Dated: May 1, 2015



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