INITIAL DECISION RELEASE NO. 962
ADMINISTRATIVE PROCEEDING
FILE NO. 3-15815

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of L&L ENERGY, INC., and DICKSON LEE, CPA	INITIAL DECISION ON DEFAULT February 17, 2016

APPEARANCES: Cheryl L. Crumpton for the Division of Enforcement, Securities and Exchange Commission

Mark Bartlett, Davis Wright Tremaine LLP, as former counsel for L&L Energy, Inc.

Russell M. Aoki, Aoki Law PLLC, for Dickson Lee, CPA

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Division of Enforcement alleges that L&L Energy, Inc., repeatedly and fraudulently misrepresented in its public filings with the Securities and Exchange Commission that it had certain persons serving in critical executive management roles when, in reality, those persons served in no such roles. L&L was effectively under the single-handed control of Dickson Lee, who is now in jail for securities fraud. L&L is in default for failing to answer, appear, or participate in this proceeding, and I deem the allegations true. L&L's misconduct violated the antifraud provisions of the federal securities laws, as well as reporting, certification, and disclosure requirements. A cease-and-desist order against L&L, disgorgement of $748,300 plus prejudgment interest, and a third-tier civil penalty of $2,675,000 are appropriate and in the public interest.

This initial decision does not apply to Lee, who settled the proceeding with the Commission. *Dickson Lee, CPA*, Securities Act of 1933 Release No. 9799, 2015 SEC LEXIS 2185 (June 1, 2015).

BACKGROUND

The Commission instituted this proceeding in March 2014. L&L was served with the order instituting proceedings (OIP) no later than April 4, 2014. I stayed the proceeding from April 3, 2014, to April 28, 2015, pending resolution of the criminal case against Respondents in

United States v. Lee, 14-cr-24 (W.D. Wash.). As noted in my order lifting the stay, Respondents were convicted and sentenced in the criminal case. *See L&L Energy, Inc.*, Admin. Proc. Rulings Release No. 2599, 2015 SEC LEXIS 1601 (Apr. 28, 2015). That order also notified the parties that a prehearing conference would be held on May 5, 2015. *Id*.

Counsel for the Division of Enforcement and Dickson Lee appeared at the prehearing conference. L&L did not participate. L&L's former counsel Mark Bartlett participated, but made clear that he was not acting in a representative capacity. At the prehearing conference, I directed that L&L's answer to the OIP was due May 26, 2015, and set a procedural schedule to resolve this proceeding. *L&L Energy, Inc.*, Admin. Proc. Rulings Release No. 2636, 2015 SEC LEXIS 1732 (May 6, 2015). I warned that if L&L failed to file an answer within the time provided, it would be deemed in default and the proceeding would be determined against it. *Id*.

L&L did not file an answer. As called for by the procedural schedule, the Division filed a motion for default and sanctions against the company. Accompanying the motion were three exhibits: L&L's plea agreement from the criminal case (cited herein as Plea Agreement), Lee's plea agreement, and the Division's report calculating prejudgment interest. L&L did not file an opposition, which was due June 12, 2015. Subsequently, at my directive, the Division made two supplemental filings: In late December 2015, the Division filed a supplemental brief; the declaration of Ricky Sachar (Sachar Decl.); and two exhibits (Sachar Exs. 1-2). In January 2016, the Division filed the declaration of Brad Mroski (Mroski Decl.) and twenty-one exhibits (Mroski Exs. 2-22).

L&L is in default for failing to file an answer, appear at the prehearing conference, respond to a dispositive motion, or otherwise defend the proceeding. 17 C.F.R. §§ 201.155(a)(1)-(2), .220(f), .221(f). Accordingly, I deemed the OIP's allegations to be true and determine this proceeding based on the OIP, the record, and facts officially noticed, including L&L's public filings with the Commission. *See* 17 C.F.R. §§ 201.155(a)(1)-(2), .323. I admit into evidence the declarations and exhibits filed by the Division.

The factual findings and legal conclusions are based on the entire record. I applied preponderance of the evidence as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981).

FINDINGS OF FACT[1]

Summary

This action arises from a fraudulent scheme by L&L and Dickson Lee to create the appearance that L&L was run by a professional management team and conceal Lee's single-handed control of the company. L&L is a Seattle-headquartered coal company with all of its

[1] The paragraph numbering in my findings of fact mirrors the OIP's paragraph numbering. Facts are drawn from the OIP, supplemented by L&L's plea agreement, information from L&L's public filings with the Commission, and the Division's exhibits, as cited herein.

operations in China and Taiwan. At all relevant times, it was led by Lee, who resigned as the company's chairman and chief executive officer in April 2014, following the criminal indictment in *United States v. Lee*. *See* Form 8-K filed May 30, 2014. From approximately August 2008 to June 2009, L&L and Lee repeatedly and fraudulently misrepresented to the public that the company had certain persons serving in critical executive management roles at the company when, in reality, those persons served in no such roles.

First, in its Form 10-K for the fiscal year ended April 30, 2008, filed on August 14, 2008 (2008 Form 10-K), L&L falsely represented that Lee's brother served as the company's CEO when, in reality, Lee served in that role and ran the day-to-day operations of the company. In that same filing, L&L represented that a former company employee, Nicol Leung, had become the company's acting chief financial officer (CFO).[2] *See* 2008 Form 10-K. In reality, Leung had emailed Lee a month prior to the filing of the 2008 Form 10-K and rejected the acting CFO position. In the company's next three quarterly reports, L&L and Lee continued to misrepresent that Leung was the company's acting CFO. For example, L&L's public filings contained certifications required under the Sarbanes-Oxley Act of 2002 that ostensibly bore Leung's electronic signature when, in reality, Leung had not signed any L&L public filings during this period; did not provide authorization for her signature to be placed on any L&L public filings; and did not perform any of the reviews necessary to have a basis for any of the attestations contained on the Sarbanes-Oxley certifications.

In approximately May 2009, Leung learned that L&L had been falsely representing her as the company's acting CFO and confronted Lee and the chair of L&L's audit committee. In response, Lee separately admitted to Leung and the audit committee chair that Leung had not performed the duties of L&L's acting CFO, and then directed the audit committee chair to conceal this fact from both the company's board and the public. Lee maintained his fraudulent scheme by continuing to falsely represent to L&L's board of directors that Leung had served as the acting CFO. Lastly, during the fall of 2009, in connection with an application for L&L to gain listing on NASDAQ, Lee misled NASDAQ by informing it that the company had made all of the required Sarbanes-Oxley certifications—including during the period of Leung's ostensible service as the acting CFO. As a result, L&L became listed on NASDAQ.

Respondents

1. L&L is a Seattle, Washington, headquartered coal company with all of its operations in China and Taiwan. The company became public through a reverse merger in August 2001. L&L's common stock is registered with the Commission pursuant to Exchange Act Section 12(b), and its stock was listed on NASDAQ as of the date of the OIP. L&L was subject to the Commission's periodic filing requirements and its shares were publicly traded. Plea Agreement at 3.

2. Dickson Lee is L&L's founder and was chairman of its board and chief executive officer from August 2008 to April 2014, when he resigned. Lee previously served as CEO from 1995 through July 2007 and chairman at various periods. He previously held CPA licenses in

[2] The OIP refers to Leung as the purported acting CFO.

Washington and New York (both licenses have lapsed, with the Washington license lapsing in June 2012) and previously audited public companies. Lee obtained his series 7 license in 1998 and his series 24 and 27 licenses in 2000. Lee was an associated person with a number of broker dealers until about 2005.

The Scheme

Leung Rejects Acting CFO Position

3. In August 2007, L&L publicly announced that Lee had resigned his position as L&L's chairman and CEO. Lee resigned those positions shortly after he was disciplined by the National Association of Securities Dealers, Inc. (NASD), and received a one-year suspension for conducting private placement offerings of L&L securities in which the private placement memoranda contained false statements. Lee believed that, if he was an L&L officer, his suspension would impede L&L from becoming listed on a stock exchange.

4. At that time, Lee installed his brother as the CEO of L&L. During the one-year period (August 2007 – August 2008) in which Lee's brother held the title of L&L's CEO, however, Lee continued to run the company as he had when he held the title of CEO.

5. In January 2008, L&L's stock became quoted on the Over-The-Counter Bulletin Board (OTCBB). In order to gain listing on a larger trading venue, such as NASDAQ, Lee sought to hire a CFO for L&L.

6. L&L hired a CFO in February 2008, but within two months that person resigned. As L&L sought a replacement CFO, Lee proposed Leung, a former employee and L&L director, as a candidate for L&L's acting CFO position.

7. In approximately June 2008, Lee, on L&L's behalf, engaged a U.S.-based placement agent to assist L&L in raising money from investors. This placement agent encouraged L&L to hire a CFO. In a June 18, 2008, email, Lee referred to Leung as a member of the management team that had been requested by the placement agent. In another June 2008 email, Lee wrote that Leung could become L&L's acting CFO in order to meet the placement agent's "requirement."

8. On June 23, 2008, members of L&L's board and Lee held a meeting. At that meeting, Lee communicated that Leung would be appointed as the company's acting CFO because the placement agent "suggested that L&L needs to have [an] [a]cting CFO (a Non-Officer position) as one of the conditions to move L&L's funding forward."

9. On that same day, at Lee's instruction, Lee's assistant sent Leung an email thanking her for becoming L&L's acting CFO. Leung, however, had never accepted the acting CFO position.

10. On July 14, 2008, Leung forwarded to Lee the June 23, 2008, email she received from his assistant regarding the acting CFO position and informed Lee that she was "unable to

become L&L [a]cting CFO as I don't have time to make any contribution to L&L. I need to take care of my own job and my kids as well . . . I wish you could find a more suitable CFO soon."

L&L Falsely Represents Lee's Brother and Leung as the Company's CEO and Acting CFO

11. On August 14, 2008, L&L filed its 2008 Form 10-K. Lee reviewed the filing before it was made public.

12. L&L, in its 2008 Form 10-K, falsely represented that Lee's brother had performed the functions of the company's CEO when, in reality, Lee continued to perform the functions of the company's CEO.

13. Moreover, in that same filing, L&L reported for the first time that Leung had been named as the company's acting CFO, disclosing that "she is a CPA with experience of both U.S. and China accounting practices. She was a senior auditing manager for a New York CPA firm with PCAOB qualification, and conducted US GAAP audits for US public listed companies." The representation that Leung was now the company's acting CFO was false because Leung had rejected the acting CFO position.

14. L&L's 2008 Form 10-K contained certifications required under Sarbanes-Oxley for the company's principal executive officer and principal financial officer, namely, its CEO and CFO. These certifications contained the electronic signatures of both Lee's brother and Leung by which each of them attested to, among other things, the fact that the 2008 Form 10-K contained no untrue statements of material fact.

15. Neither Lee's brother nor Leung, however, provided any such attestation and neither Lee's brother nor Leung provided any authorization to have their electronic signatures placed on their respective Sarbanes-Oxley certifications.

16. L&L, in its 2008 Form 10-K, also falsely represented that it had, with the participation of its CEO (Lee's brother) and CFO (Leung – the purported acting CFO), evaluated the effectiveness of the design and operation of its disclosure controls and procedures, and based on such evaluation, the company, its CEO (Lee's brother), and CFO (Leung) concluded that the disclosure controls and procedures were effective.

L&L and Lee Continue their Scheme to Falsely Represent Leung as the Acting CFO

17. On August 25, 2008, after his one-year NASD suspension was over, Lee officially returned to the position of L&L's CEO and chairman.

18. On September 15, 2008, L&L filed with the Commission its Form 10-Q for the period ended July 31, 2008 (the First Quarter Form 10-Q).[3] Lee signed the filing. Like the 2008

[3] The OIP incorrectly notes this period as the period ended July 31, 2009.

Form 10-K, the First Quarter Form 10-Q contained a Sarbanes-Oxley certification that was ostensibly electronically signed by Leung. Moreover, the First Quarter Form 10-Q[4] also contained the representation that the CEO (Lee) and Leung had evaluated the effectiveness of the design and operation of the company's disclosure controls and procedures and those controls and procedures were effective.

19. Leung, however, did not serve as the company's acting CFO in any capacity; did not authorize her electronic signature to be placed on the Sarbanes-Oxley certifications; did not perform any of the reviews or functions enumerated on the Sarbanes-Oxley certifications; and did not evaluate the effectiveness of the company's disclosure controls and procedures.

20. The First Quarter Form 10-Q also contained a Sarbanes-Oxley certification for Lee. In his Sarbanes-Oxley certification, Lee falsely certified that, to his knowledge, L&L's First Quarter Form 10-Q contained no untrue statements of material fact.

21. In approximately December 2008, L&L retained a U.S.-based investment research firm to write a research report concerning L&L. In late December 2008, the research firm emailed Lee a draft research report for his review. The research report contained a prominent section on L&L's management team, listed Leung as the company's CFO and stated that Leung "coordinates all accounting for L&L." Lee sent a revised version of the research report to the research firm with some "minor changes," but did not correct the false statements regarding Leung as the acting CFO. This report was published in approximately April 2009 and included the false statements regarding Leung's role as the acting CFO.

22. On December 22, 2008, L&L filed with the Commission its Form 10-Q for the period ended October 31, 2008, and on March 23, 2009, L&L filed with the Commission its Form 10-Q for the period ended January 31, 2009. Lee signed both of these filings. These two public filings again contained false, electronically signed, Sarbanes-Oxley certifications by Leung as the acting CFO. Moreover, these two filings contained the false statements concerning Leung's evaluation of the effectiveness of the company's disclosure controls and procedures.

23. These two public filings also contained Lee's own Sarbanes-Oxley certifications in which he again falsely certified that, to his knowledge, the Forms 10-Q contained no untrue statements of material fact.

24. As noted above, L&L placed electronic signatures on the public filings to reflect that Leung had signed the requisite Sarbanes-Oxley certifications. The Commission staff requested from L&L, but never received, the actual signature pages bearing Leung's signature for each of the requisite Sarbanes-Oxley certifications.

25. L&L continued representing to the public that Leung was the acting CFO until June 2009, when the company filed a Form 8-K announcing that another individual had been appointed as the company's acting CFO. *See* Form 8-K filed June 23, 2009. On August 13,

[4] The OIP refers to this filing as the "First Quarter 2009 Form 10-K."

2009,[5] L&L filed its 2009 Form 10-K, which contained Lee's Sarbanes-Oxley certification that, based on his and the new CFO's most recent evaluation of the company's internal control over financial reporting, all fraud involving management had been disclosed to the company's auditors and to the company's audit committee. This certification was false because Lee had not disclosed to the company's external auditors or the company's entire audit committee that Leung was misrepresented in L&L's previous filings as its acting CFO.

Lee Admits that Leung Did Not Perform the Work of the Acting CFO

26. In approximately May 2009, Leung became aware that L&L had falsely represented her as the company's acting CFO in the company's public filings and, on May 6, 2009, sent Lee an email that included her July 14, 2008, email in which she rejected the acting CFO position. In the email, Leung wrote that she "clearly indicated that [she] would not accept the offer of being the [a]cting CFO of L&L," and asked Lee for an immediate explanation.

27. On May 13, 2009, Lee emailed Leung and wrote: "[t]here is a misunderstanding of the [a]cting CFO role . . . Based on your input, your name is removed to please you." Leung replied that—just because she and Lee had known each other for ten years—it did not mean "that you could use my name, without authorisation, to the file 10K to the U.S. SEC." In response, on May 19, 2009, Lee emailed Leung and separately admitted, "[y]ou did not actually conduct the work as [a]cting [CFO]."

Lee Admits to L&L's Audit Committee Chair that Leung Did Not Serve as Acting CFO

28. On May 21, 2009, Leung emailed Shirley Kiang, who was then the chair of L&L's audit committee and a member of its board of directors. In the email, Leung told Kiang that she had a "serious and urgent" matter related to L&L's public information made without her knowledge and asked Kiang to investigate.

29. Kiang subsequently contacted Lee and asked whether Leung had actually served as the company's acting CFO. Lee initially informed Kiang that Leung had served as the company's acting CFO and was making false allegations in an attempt to obtain money from the company.

30. Kiang asked Lee for evidence to support his assertion that Leung had served as the company's acting CFO. In response, Lee provided Kiang with a letter that appeared to be addressed to Leung, dated May 28, 2008, and purported to be signed by Lee's brother as the company's CEO. The letter asked Leung to confirm that she had agreed to accept the acting CFO position and stated that if the company did not receive a response to the letter within ten days, the company would treat her lack of response as her acceptance of the position.

31. This letter, however, was not created on May 28, 2008; was not signed by Lee's brother; and was never sent to Leung. Rather, this letter was created on May 26, 2009—almost

[5] The OIP incorrectly identifies the filing date as August 12.

one year after Leung had rejected the position—and was stored in Lee's L&L computer network folder.

32. On June 4, 2009—after receiving no response from Kiang—Leung emailed Kiang again. Leung again asked Kiang to investigate her allegations, specifically that she was misrepresented in L&L's filings as the company's acting CFO, and included her July 14, 2008, email to Lee rejecting the position.

33. After receiving the June 4 email, Kiang again asked Lee for an explanation. Lee then admitted to Kiang that Leung had not actually served as the company's acting CFO and that he had used Leung's name on L&L's public filings without Leung's permission. Lee directed Kiang to not disclose this information to anyone, including the company's board of directors or the public, and told her that if this information became publicly known, L&L's stock price would drop.

34. After this, Lee continued to falsely represent to the company's board of directors that Leung had served as the company's acting CFO.

35. During the nearly one-year period in which Leung was falsely represented in public filings as the company's acting CFO, L&L raised at least $748,300 from investors using stock purchase agreements and convertible debt in which L&L expressly attested to the accuracy of its public filings and private placement documents that referred the investor to publicly available additional information about the company. Mroski Decl. ¶¶ 5, 36.

L&L Makes Materially False and Misleading Statements on NASDAQ Application to Gain NASDAQ Listing

36. In approximately September 2009, L&L completed an application to become listed on NASDAQ. As part of the application process, NASDAQ requested a variety of information, including confirmation that the company had made all of the required Sarbanes-Oxley certifications.

37. L&L, in a communication from Lee, confirmed that the company had made all of the required Sarbanes-Oxley certifications. L&L misled NASDAQ in this communication because it did not inform NASDAQ that its required CFO Sarbanes-Oxley certifications for its 2008 Form 10-K or its three subsequent Forms 10-Q were false. As a result, L&L gained listing on NASDAQ in February 2010.

Criminal Proceedings

I take official notice of the proceedings in *United States v. Lee*, 14-cr-24 (W.D. Wash.). *See* 17 C.F.R. § 201.323.

L&L pleaded guilty before a federal magistrate judge to one count of securities fraud in violation of 18 U.S.C. § 1348. *See* Minute Entry, Plea Agreement, Report & Recommendation, *Lee* (Jan. 22, 2015), ECF Nos. 67-69. The district court accepted that plea and adjudicated L&L

as guilty. *See* Order of Acceptance of Plea of Guilty, *Lee* (Feb. 6, 2015), ECF No. 71. In its plea agreement, L&L stipulated to facts along the same lines of the OIP's allegations. *See* Plea Agreement. The court sentenced L&L to five years of corporate probation, fined the company $175,000, and prohibited the company from listing or offering on any U.S. securities exchange its securities or otherwise offering securities in the United States. *See* Judgment, *Lee* (Apr. 24, 2015), ECF No. 82.

Lee pleaded guilty to two counts of securities fraud in violation of 18 U.S.C. § 1348, and the district court sentenced him to five years in prison. *See* Minute Entry, Plea Agreement, Report & Recommendation, Order of Acceptance of Plea of Guilty, and Judgment, *Lee* (Sept. 23, 2014, Oct. 8, 2014, and Feb. 20, 2015), ECF Nos. 48, 50-52, 74.

CONCLUSIONS OF LAW

Securities Act Section 17(a), and Exchange Act Section 10(b) and Rule 10b-5

Material Misstatements and Omissions

A violation of Exchange Act Section 10(b) and Rule 10b-5(b) is established when a person 1) makes a material misstatement or omission 2) with scienter 3) in connection with the purchase or sale of securities 4) by means of interstate commerce or the mails. *See* 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(b); *SEC v. Todd*, 642 F.3d 1207, 1215 (9th Cir. 2011); *VanCook v. SEC*, 653 F.3d 130, 138 (2d Cir. 2011). By contrast, a violation of Securities Act Section 17(a)(2) turns on whether the respondent has directly or indirectly obtained money or property "by means of" a material untrue statement or omission in the offer or sale of securities using the means of interstate commerce. 15 U.S.C. § 77q(a)(2). Liability under Section 17(a)(2) does not depend on whether the respondent made a false statement and does not require scienter. *See Aaron v. SEC*, 446 U.S. 680, 696 (1980); *SEC v. Stoker*, 865 F. Supp. 2d 457, 464-66 (S.D.N.Y. 2012).

L&L's public filings contained false statements and omissions. Specifically, the company's 2008 Form 10-K reported that Leung (the purported acting CFO) had been named the company's acting CFO, despite the fact that she had declined the position. OIP ¶¶ 10-11, 13. Also, the Form 10-K falsely represented that Lee's brother had performed the functions of L&L's CEO for a period of time, when, in reality, Lee continued to perform those functions; contained false certifications attesting to the accuracy of the filings and appropriateness of internal controls; and falsely represented that the company had evaluated the effectiveness of the company's internal disclosure controls and found that such disclosure controls were effective, with the participation of its purported CEO (Lee's brother) and purported acting CFO (Leung). *Id.* ¶¶ 4, 11-12, 14-16. The Form 10-K failed to disclose Lee's role as performing the functions of the company's CEO, *id.* ¶ 12, and failed to disclose that the company, in reality, had no acting CFO, *id.* at 2-7 & ¶ 13; 2008 Form 10-K.

L&L's next three Forms 10-Q contained false certifications that Lee and Leung had evaluated the effectiveness of the company's internal disclosure controls and found that such disclosure controls were effective; and Lee's false certification that the reports contained no

untrue statements of material fact. OIP ¶¶ 18-20, 22-24. As with the 2008 Form 10-K, the Forms 10-Q contained Leung's unauthorized electronic signature. *Id*. ¶¶ 14-15, 18-19, 24. Additionally, L&L's 2009 Form 10-K contained Lee's false certification that all fraud involving management had been disclosed to the company's auditors and audit committee when, in fact, Lee had not fully disclosed the misrepresentations regarding Leung as the acting CFO to the company's external auditors or the entire audit committee. *Id*. ¶ 25.

These false statements and omissions were material. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32, 240 (1988) (materiality is established when a reasonable investor would have viewed the misstatement or omission "as having significantly altered the total mix of information made available" (internal quotation marks omitted)). Indeed, L&L stipulated in its plea agreement that its false statements were material. Plea Agreement at 2, 4-5. A reasonable investor would place importance on a company having a bona fide CFO and CEO performing the functions of those positions, and Lee's central role in fabricating the false statements and omissions impugned the company's integrity, which alone would be material to investors. *See United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010) ("It is well-settled that information impugning management's integrity is material to shareholders."); *In re Monster Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 139 (S.D.N.Y. 2008) (concluding that because a CEO "personally certified the false statements in this case, they can be seen as impugning the integrity of management, which in itself would [be] material to investors" (internal quotation marks and alterations omitted)). Further, the company's filings with the Commission contained forged signatures, which "call the entire document[s] into question," and a reasonable investor would find it important that a purported officer "did not sign the documents and likely did not read them." *United States v. Wheeler*, 29 F.3d 637, at *1 (9th Cir. 1994) (unpublished).

These false statements and omissions were made with scienter, "a mental state embracing intent to deceive, manipulate, or defraud." *Aaron*, 446 U.S. at 686 n.5 (internal quotation marks omitted). L&L stipulated as such in its plea agreement. Plea Agreement at 2-3. Although Lee did not sign the 2008 Form 10-K, he reviewed it prior to its issuance and had single-handed control over the company. At that time, Lee knew that Leung had rejected the offer to become L&L's acting CFO and that his brother did not perform the duties of CEO. As to the next three Forms 10-Q, Lee signed each of them and, at the time, he knew that Leung had rejected the acting CFO position. Given Lee's control over L&L and its filings, Lee's scienter is imputed to L&L. *See Clarke T. Blizzard*, Advisers Act Release No. 2253, 2004 SEC LEXIS 1298, at *20 (June 23, 2004).

L&L's fraud was committed in connection with the purchase or sale of securities within the meaning of Exchange Act Section 10(b), and in the offer or sale of securities within the meaning of Securities Act Section 17(a). *See SEC v. Zandford*, 535 U.S. 813, 819-20, 825 (2002) (Exchange Act Section 10(b)'s nexus requirement is to be construed broadly and flexibly); *United States v. Naftalin*, 441 U.S. 768, 778 (1979) (Securities Act Section 17(a) was intended to cover any fraudulent scheme in an offer or sale of securities). Where, as here, the fraud involves the public dissemination of misinformation in public filings with the Commission, the nexus element is generally met by proof of the means of its dissemination and the materiality of the misrepresentation or omission. *See SEC v. Wolfson*, 539 F.3d 1249, 1262-63 (10th Cir. 2008) (collecting case-law); *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993).

L&L's public filings, like all reports filed with the Commission, were designed to reach investors and are documents upon which a reasonable investor would presumably rely in deciding whether to purchase its securities, and as already discussed, materiality is established. *See Wolfson*, 539 F.3d at 1262-63; *SEC v. Benson*, 657 F. Supp. 1122, 1131 (S.D.N.Y. 1987); *Rita J. McConville*, Exchange Act Release No. 51950, 2005 SEC LEXIS 1538, at *36-37 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006); OIP ¶ 35.

The interstate commerce element is satisfied because the misrepresentations and omissions relate to L&L's public filings, which were filed with the Commission by electronic means, through the telephone lines or otherwise across state lines using interstate commerce. *See Rita J. McConville*, 2005 SEC LEXIS 1538, at *38; Plea Agreement at 4 (L&L's filings submitted from Tukwila, Washington).

Further, L&L obtained money or property "by means of" the above materially false statements and omissions within the meaning of Section 17(a)(2). *See* 15 U.S.C. § 77q(a)(2); *Stoker*, 865 F. Supp. 2d at 465. During the period when these misstatements were made, L&L raised at least $748,300 from investors using stock purchase agreements and convertible debt in which the company expressly attested to the accuracy of its public filings and private placement documents that referred the investor to publicly available additional information about the company. As already discussed, public filings with the Commission are documents designed to reach investors and upon which a reasonable investor would presumably rely in making investment decisions. L&L's misstatements and omissions in those filings regarding its chief officers and accompanying false certifications and signatures—made during the very period in which it obtained investor money through stock offerings—establishes that it obtained money by means of such misrepresentations.

Accordingly, L&L violated Exchange Act Section 10(b) and Rule 10b-5(b), as well as Securities Act Section 17(a)(2).

Scheme Liability

Under Exchange Act Section 10(b) and Rule 10b-5(a) and (c), scheme liability extends to a person who 1) employs any manipulative or deceptive device, or engages in any manipulative or deceptive act, 2) with scienter 3) in connection with the purchase or sale of securities 4) by means of interstate commerce or the mails. *See* 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(a), (c); *Aaron*, 446 U.S. at 691. Deceptive devices and acts include engaging in conduct that has "the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme." *SEC v. Brown*, 740 F. Supp. 2d 148, 172 (D.D.C. 2010) (quoting *Simpson v. AOL Time Warner Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds, Avis Budget Group, Inc. v. Cal. State Teachers' Ret. Sys.*, 552 U.S. 1162 (2008)); *see SEC v. Dorozhko*, 574 F.3d 42, 50 (2d Cir. 2009) ("In its ordinary meaning, 'deceptive' covers a wide spectrum of conduct involving cheating or trading in falsehoods. . . . [C]onduct prohibited by Section 10(b) and Rule 10b-5 irreducibly entails some act that gives the victim a false impression." (internal citations and quotation marks omitted)).

Securities Act Section 17(a)(1) and (3) make it unlawful for a person, in the offer or sale of securities, and by means of interstate commerce or the mails, "to employ any device, scheme, or artifice to defraud," or "to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." 15 U.S.C. § 77q(a)(1), (3). Section 17(a)(1) requires scienter, whereas Section 17(a)(3) does not. *Aaron*, 446 U.S. at 695-97.

L&L's repeated false statements in its periodic filings with the Commission (which included the false Sarbanes-Oxley certifications) constituted manipulative and deceptive devices and acts within the meaning of Rule 10b-5(a) and (c), as well as fraudulent devices and practices within the meaning of Section 17(a)(1) and (3). L&L engaged in conduct to make it appear that Lee's brother and Leung were responsible for and performed critical aspects of L&L's business—creating false appearances of fact. The company raised at least $748,300 from investors during the period of its fraud, misleading and defrauding them by using falsehoods in public documents on which investors would presumably rely in making investment decisions.

Two purposes of this scheme were to raise money from investors and gain L&L's listing on NASDAQ. In furtherance of this scheme, Lee fabricated a letter from his brother requesting Leung to confirm acceptance of the acting CFO position and treating any non-response as acceptance. OIP ¶¶ 30-31. He then instructed Kiang, the chair of the company's audit committee and a board member, to conceal that Leung never served as the company's acting CFO, and lied to L&L's board members regarding the situation. *Id*. ¶ 33-34. Lee arranged for Leung's digital signature to be placed on L&L's certifications without her authorization, which enabled L&L to misrepresent to NASDAQ that its Sarbanes-Oxley certifications were complete. *Id*. ¶¶ 14-15, 19, 24, 36-37. These acts are imputable to L&L. *See Cohen v. Joint Health Ventures*, 107 F. App'x 714, 718 n.1 (9th Cir. 2004) ("[A] corporation always acts through its officers and agents."); *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977) (a firm "can act only through its agents, and is accountable for the actions of its responsible officers").

As already discussed, L&L's conduct was committed with scienter, in connection with the purchase or sale of securities within the meaning of the Exchange Act, in the offer or sale of securities within the meaning of the Securities Act, and by interstate means.

Accordingly, L&L violated Exchange Act Section 10(b) and Rule 10b-5(a) and (c), as well as Securities Act Section 17(a)(1) and (3).

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 require issuers with securities registered under Section 12 to file annual and quarterly reports with the Commission. 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13. L&L violated these provisions as a result of filing annual and quarterly reports with the Commission that contained materially false information and omissions. *See SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975) ("Clearly the requirement that an issuer file reports under Section 13(a) embodies the requirement that such reports be true and correct, and a failure to comply with such section would result in violations of the securities laws."); *Russell Ponce*, Exchange Act Release No. 43235, 2000 SEC LEXIS 1814,

at *18 n.23 (Aug. 31, 2000) ("A violation of Section 13(a) is established if a quarterly or annual report contains materially false statements or fails to state material information necessary to make the statements in it not misleading."), *pet. denied*, 345 F.3d 722 (9th Cir. 2003).

Exchange Act Rule 13a-14

In relevant part, Rule 13a-14 requires that principal executive and financial officers certify that, based on their knowledge, the issuer's financial statements are accurate, and that, based on their most recent evaluation of the company's internal control over financial reporting, they have disclosed all fraud involving management, whether or not material, to the company's auditors and audit committee. 17 C.F.R. §§ 240.13a-14, 229.601(b)(31). The false certifications in L&L's periodic fillings violated this rule.[6]

Exchange Act Rule 13a-15

Rule 13a-15(b) provides that each issuer's management must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness of the issuer's disclosure controls and procedures, on a quarterly basis. 17 C.F.R. § 240.13a-15(b). L&L's public filings falsely represented that its officers, including Leung and Lee's brother, performed the required evaluation. But L&L had no bona fide CFO, as Leung never served in that capacity. For a period of time, Lee's brother purportedly served as the company's CEO when, in reality, Lee performed the CEO functions. The company therefore lacked any genuine management structure to evaluate the effectiveness of its disclosure controls and procedures, and, given the knowingly false statements and forged signatures of Leung and Lee's brother in L&L's periodic filings, it is apparent that no such evaluation took place. L&L therefore violated this rule.

Exchange Act Rule 12b-20

Rule 12b-20 requires that reports filed with the Commission contain further material information "as may be necessary to make the required statements, in the light of the circumstances under which they are made[,] not misleading." 17 C.F.R. § 240.12b-20. L&L violated this rule by failing to disclose that while Lee's brother held the title of CEO for a period of time, Lee still functioned as the company's CEO. OIP ¶ 12. The company also failed to disclose that it had no genuine acting CFO in its 2008 Form 10-K and next three Forms 10-Q.

[6] At least one district court has held that the Commission could not pursue a Rule 13a-14 violation as an independent claim in federal court. *See, e.g.*, *SEC v. Black*, No. 04-cv-7377, 2008 WL 4394891, at *16-17 (N.D. Ill. Sept. 24, 2008). However, the *Black* decision is inconsistent with the weight of authority, which holds that Exchange Act Section 21(d)(1) authorizes such a claim in federal court. *See SEC v. Brown*, 878 F. Supp. 2d 109, 118 & n.4 (D.D.C. 2012) (collecting cases). Analogously, Section 21C authorizes a Rule 13a-14 claim in this proceeding. OIP at 1, 8; *see* 15 U.S.C. § 78u-3(a) (Commission authority to bring a cease-and-desist proceeding if "any person is violating, has violated, or is about to violate any provision of this chapter, *or any rule or regulation thereunder*" (emphasis added)).

Section 302 of Regulation S-T of the Exchange Act

In relevant part, Regulation S-T requires that: 1) each signatory to an electronic filing manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing; 2) such document be executed before or at the time the electronic filing is made and retained by the filer for a period of five years; and 3) the filer provide the Commission staff with a copy of the document upon request. 17 C.F.R. § 232.302(b). L&L violated this provision, as Leung never signed the certifications for the 2008 Form 10-K or the next three Forms 10-Q, and Lee's brother never signed the certification for the 2008 Form 10-K. OIP ¶¶ 14-15, 18-19, 22, 24. Further, despite the Division's requests, L&L never produced any actual signature pages for Leung as the purported acting CFO. *Id*. ¶ 24.

Willfulness

Based on the above misconduct and scienter, L&L's violations were willful. *See Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000); *Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *48-49 n.139 (May 16, 2014), *vacated on other grounds*, 793 F.3d 147 (D.C. Cir. 2015).

SANCTIONS

The Division seeks disgorgement, a cease-and-desist order, and a third-tier civil penalty.

Disgorgement

Securities Act Section 8A and Exchange Act Section 21B authorize disgorgement, including reasonable interest, in this proceeding. 15 U.S.C. §§ 77h-1(e), 78u-2(e); OIP at 8. Disgorgement of ill-gotten gains "is an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *Montford & Co.*, Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *94 (May 2, 2014) (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989)), *pet. denied*, 793 F.3d 76 (D.C. Cir. 2015). "The Division has the initial burden of demonstrating a reasonable approximation of profits causally connected to the violation." *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 SEC LEXIS 3001, at *9 (Aug. 21, 2014) (internal quotation marks omitted). "The Division need only show but-for causation between a [respondent]'s violations and profits." *Id*. "The burden then shifts to the respondent to demonstrate that the Division's estimate is not a reasonable approximation." *Id*. at *9-10 (internal quotation marks omitted). "Uncertainty as to the amount of unjust enrichment will not prevent disgorgement." *Id*. at *10.

From the filing of L&L's 2008 Form 10-K on August 14, 2008, until the filing of a Form 8-K on June 23, 2009, L&L's public filings with the Commission falsely represented Leung as the company's acting CFO. During this same period, the company raised at least $748,300 from investors using stock purchase agreements and convertible debt in which L&L expressly attested to the accuracy of its public filings and private placement documents that referred the investor to publicly available additional information about the company. Mroski Decl. ¶¶ 5, 36; OIP ¶ 35.

The $748,300 raised from investors is a reasonable approximation of profits causally connected to the violation, although my reasons for such finding somewhat differ from those advanced by the Division. First, although it is correct that I can deem true the OIP's allegations, it is questionable whether significant monetary sanctions can or should be imposed without some meaningful explanation substantiating the requested relief against a defaulted party. *See Rapoport v. SEC*, 682 F.3d 98, 108 (D.C. Cir. 2012). In its motion for sanctions, the Division's request for disgorgement was supported only by paragraph 35 of the OIP, which alleges that "L&L raised approximately $750,000" during the relevant period. Motion at 24; OIP ¶ 35. In other words, the Division's requested disgorgement amount was originally based on the $750,000 figure alleged in the OIP. I therefore directed the Division to supplement the record, and the Division provided the declaration of an assistant chief accountant and exhibits that support a finding that $748,300 was raised from investors during the period of misconduct. *See* Mroski Decl. & Exs. 2-22.

Second, there must be "but-for causation between a [respondent]'s violations and profits." *Jay T. Comeaux*, 2014 SEC LEXIS 3001, at *9. Here, the requisite causal link between L&L's violation and the $748,300 raised from investors is present because L&L's material misstatements struck at the heart of its public filings and perpetuated a scheme to deceive investors into believing that it had a bona fide acting CFO and, for a period, that Lee's brother was a bona fide CEO. I reemphasize that public filings with the Commission are documents designed to reach investors and upon which a reasonable investor would presumably rely in making investment decisions. L&L had no legitimate acting CFO during the time at issue and no legitimate signature from such CFO on its Sarbanes-Oxley certifications. In these circumstances, L&L's public filings were impugned and its public image was a sham; if the truth were known, it is doubtful that the company could have raised a cent from any reasonable investor.

Third, how a respondent choses to spend ill-gotten gains generally does not entitle the respondent to an offset in disgorgement. *See Richmark Capital Corp.*, Securities Act Release No. 8333, 2003 SEC LEXIS 2680, at *34 n.35 (Nov. 7, 2003) (collecting case-law). On the other hand, money repaid or distributed to investor-victims could offset disgorgement. Although the purpose of disgorgement is not to compensate victims, it cannot be said that a respondent was unjustly enriched by amounts repaid to investors.[7] *See SEC v. Palmisano*, 135 F.3d 860, 863-64

[7] *See, e.g., SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005) ("[T]he 'power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing. Any further sum would constitute a penalty assessment.'" (quoting *SEC v. Blatt*, 583 F.2d 1325, 1335 (5th Cir. 1978))); *SEC v. Loomis*, 17 F. Supp. 3d 1026, 1032 (E.D. Cal. 2014) (directing the Commission to submit disgorgement figures that accounted for funds repaid to investors); *SEC v. Rockwell Energy of Texas, LLC*, No. 09-cv-4080, 2012 WL 360191, at *3 (S.D. Tex. Feb. 1, 2012) (defendants "must receive a set-off 'for amounts repaid to investors'" (quoting *SEC v. United Energy Partners, Inc.*, 88 F. App'x 744, 747 (5th Cir. 2004))); *SEC v. Haligiannis*, 470 F. Supp. 2d 373, 384 (S.D.N.Y. 2007) ("[C]ontributions may be considered ill-gotten gains as a result of the fraud, although distributions must be subtracted as they did not unjustly enrich defendant."); *SEC v. Monarch Funding Corp.*, No. 85-cv-7072, 1996 WL 348209, at *10 (S.D.N.Y. June 24, 1996) ("[I]t is axiomatic that disgorgement should

(2d Cir. 1998) (modifying judgment "to provide that to the extent that [the defendant] pays or has paid restitution [to victims] as ordered in the criminal judgment, such payments will offset his disgorgement obligation under the present judgment"). Here, however, there is no indication that any stock proceeds were repaid or distributed to investors. L&L's 2008, 2009, and 2010 Forms 10-K indicate that the company did not intend to pay dividends and instead planned to retain all earnings, if any, to finance or expand its business.[8] Also, the Division represents that L&L failed to produce its accounting records despite an investigative subpoena seeking those records and that, during the investigation, the Division did not become aware of any evidence that L&L returned any portion of the stock proceeds to investors. Sachar Decl. ¶¶ 3, 5 & Ex. 1. In this context, any uncertainty in the disgorgement amount falls on L&L, which has chosen not to appear in this proceeding. *See First City Fin. Corp.*, 890 F.2d at 1230 ("[T]he risk of uncertainty should fall on the wrongdoer whose illegal conduct created that uncertainty.").

Accordingly, upon the supplemented record, the Division has met its burden that $748,300 is a reasonable approximation of L&L's illicit gains. I will order disgorgement of this amount, plus prejudgment interest.[9]

Cease and Desist

Securities Act Section 8A and Exchange Act Section 21C authorize the Commission to issue a cease-and-desist order where, as here, the respondent has violated any provision of the Securities or Exchange Acts. 15 U.S.C. §§ 77h-1(a), 78u-3(a); OIP at 9. Although there must be some likelihood of future violations whenever the Commission issues a cease-and-desist order, the required showing is "significantly less than that required for an injunction." *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *114 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). Absent evidence to the contrary, a single past violation ordinarily suffices to establish a risk of future violations. *Id.* at *102-03.

In determining whether to issue a cease-and-desist order, the Commission considers, along with the risk of future violations, the following factors: "the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, 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 respondent's opportunity to commit future violations." *Id.* at *116. In addition, the Commission considers "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial

---

be fashioned on the amount of ill-gotten gain currently realized by the defendant and not yet already repaid.").

[8] *See* 2010 Form 10-K filed July 28, 2010, at 13, 16; 2009 Form 10-K filed Aug. 13, 2009, at 13; 2008 Form 10-K at 8.

[9] L&L continued to misrepresent Leung as the acting CFO until June 23, 2009, when the company filed a Form 8-K stating that the company had appointed a new acting CFO. Accordingly, prejudgment interest shall run from July 1, 2009, "through the last day of the month preceding the month in which payment of disgorgement is made." 17 C.F.R. § 201.600(a). I will define the prejudgment interest rate in the ordering paragraphs.

function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." *Id*. The Commission weighs these factors in light of the entire record, and no one factor is dispositive. *Id.*; *accord Montford & Co.*, 2014 SEC LEXIS 1529, at *88.

L&L committed serious violations of the antifraud provisions of the securities laws and such violations were ongoing and repetitive. This warrants a severe sanction. *See Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *23 (Dec. 12, 2013) (the Commission has "repeatedly held that conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws" (internal quotation marks omitted)), *pet. denied*, 773 F.3d 89 (D.C. Cir. 2014); *Richard C. Spangler, Inc.*, Exchange Act Release No. 12104, 1976 SEC LEXIS 2418, at *34 (Feb. 12, 1976) ("When the past misconduct involves fraud, fidelity to the public interest requires us to be mindful of the fact that the securities business is one in which opportunities for dishonesty recur constantly and that this necessitates specialized legal treatment." (internal footnote omitted)).

L&L filed multiple reports with the Commission with forged signatures and created false appearances that it had an acting CFO, when, in reality, it had no acting CFO for nearly a year. It also falsely represented having Lee's brother as a legitimate CEO for a period of time when, in reality, Lee continued to control the company. L&L has not appeared in this action to rebut the presumption that such misconduct creates the risk for future violations. Further, as already discussed, its misconduct was committed with a high degree of scienter—intent to defraud. Lee, whose actions are imputed to the company, knew that Leung was not serving as the acting CFO and did not perform the duties of such position, yet deliberately and deceptively misrepresented her as serving in such position to the public. Although L&L's guilty plea may serve as some recognition of the wrongful nature of its misconduct, the company has not appeared in this action to provide any further assurances.

As the company appears to be inactive, and Lee has been sentenced to prison, it is less likely that the company will commit wrongdoing in the immediate future. Also, the violations were not particularly recent. However, such factors are not dispositive. The company is still in existence and nothing precludes Lee, either directly or through someone else, from again using L&L as a vehicle for fraud.

The Division has not presented direct evidence of investor harm aside from the substantial money raised from investors, which does not appear to be have been repaid. In any event, such harm is evident given the nature of the violations. A reasonable investor would have felt deceived by L&L's conduct and, if aware of such conduct, would not have invested in the company. Lastly, a cease-and-desist order puts the public on notice regarding L&L's fraudulent actions and prohibits the company from committing future misconduct.

Civil Money Penalty

Securities Act Section 8A and Exchange Act Section 21B authorize the Commission to impose civil money penalties in a cease-and-desist proceeding such as this one where the respondent violated provisions of the Securities and Exchange Acts and such penalty is in the

public interest. 15 U.S.C. §§ 77h-1(g)(1), 78u-2(a)(2); OIP at 8. A maximum third-tier penalty is specifically authorized because L&L's violations involved fraud, deceit, manipulation, and deliberate and reckless disregard of regulatory requirements; and created a significant risk of substantial losses to other persons. 15 U.S.C. §§ 77h-1(g)(2)(C), 78u-2(b)(3). To determine whether a penalty is in the public interest, the Commission considers: (1) whether the violations involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm caused to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require.[10] 15 U.S.C. § 78u-2(c); *Jay T. Comeaux*, 2014 SEC LEXIS 3001, at *22 & n.39.

The Division requests that I count four of L&L's false public filings—its 2008 Form 10-K and next three Forms 10-Q—as separate violations.[11] This unit of violation is reasonable and prejudices L&L less than if I were to count each act and omission committed in relation to each filing as a separate unit of violation. *Cf. Rapoport*, 682 F.3d at 108 ("[T]he Commission must determine how many violations occurred and how many are attributable to each person[.]"). As to L&L's 2008 Form 10-K and its next two Forms 10-Q, the maximum third-tier civil penalty for each violation was $650,000.[12] *See* 17 C.F.R. § 201.1003, Subpt. E, Table III. As to L&L's March 23, 2009, filing of its Form 10-Q for the period ended January 31, 2009, the maximum third-tier civil penalty was $725,000. *See* 17 C.F.R. § 201.1004, Subpt. E, Table IV. Within any particular tier, the Commission has the discretion to set the amount. *See Brendan E. Murray*, Advisers Act Release No. 2809, 2008 SEC LEXIS 2924, at *42 (Nov. 21, 2008); *Phlo Corp.*, Exchange Act Release No. 55562, 2007 SEC LEXIS 604, at *60 (Mar. 30, 2007).

I incorporate my prior findings and conclusions herein. As already discussed, L&L violated the antifraud and other provisions of the securities laws with a high degree of scienter, and raised $748,300 from investors during the period of its fraud. Its fraud primarily consisted of creating the false appearance that the company had a bona fide acting CFO, when no one actually performed the CFO role, and hiding the fact that for a period of time Lee was still functioning as the company's CEO, by installing his brother as the purported CEO. By committing such fraud while raising large sums of investor money, the company created a significant risk of losses to investors. Indeed, Lee knew that there was a significant risk that the company's stock price would plummet if the truth about the purported acting CFO became publicly known. OIP ¶ 33.

---

[10] Securities Act Section 8A does not contain a list of public interest factors. *See* 15 U.S.C. § 77h-1(g). Nonetheless, the factors listed under Exchange Act Section 21B have been used by the Commission in assessing sanctions under both provisions. *See Francis V. Lorenzo*, Securities Act Release No. 9762, 2015 SEC LEXIS 1650, at *58-59 (Apr. 29, 2015).

[11] The Division does not request penalties for L&L's false 2009 Form 10-K.

[12] The Division incorrectly identifies $500,000 as the maximum amount for violations occurring in 2008. Motion at 26-27. My civil penalty total of $2,675,000 therefore differs from the Division's requested total of $2,250,000.

L&L's criminal conviction for securities fraud underscores the severity of its misconduct. Although the harm caused to others is not quantified, it is inherent in the nature of these violations. Deterrence calls for the severest penalty, to prevent future violations by L&L and to signal to other issuers that blatant misrepresentations in public filings with the Commission will not be tolerated. Investors rely on such filings in making investment decisions. Fabricating officer positions and forging signatures on such filings as part of a scheme to raise investor money and to be listed on an exchange demonstrates a total disregard for basic regulatory principles.

In conclusion, I will impose the maximum penalty totaling $2,675,000.

FAIR FUND

I require that the amount of disgorgement, prejudgment interest, and civil money penalty be used to create a fair fund for the benefit of L&L investors harmed by the violations. *See* 17 C.F.R. § 201.1100.

ORDER

It is ORDERED that, pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, L&L Energy, Inc., shall CEASE AND DESIST from committing or causing any violations or future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5, Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, 13a-14, and 13a-15, and Section 302(b) of Regulation S-T of the Exchange Act.

It is FURTHER ORDERED that, pursuant to Section 8A of the Securities Act of 1933 and Section 21B of the Securities Exchange Act of 1934, L&L Energy, Inc., shall DISGORGE $748,300 plus prejudgment interest. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), shall be compounded quarterly, and shall run from July 1, 2009, through the last day of the month preceding the month in which payment is made. 17 C.F.R. § 201.600.

It is FURTHER ORDERED that, pursuant to Section 8A of the Securities Act of 1933 and Section 21B of the Securities Exchange Act of 1934, L&L Energy, Inc., shall PAY A CIVIL MONEY PENALTY in the amount of $2,675,000.

It is FURTHER ORDERED that, pursuant to 17 C.F.R. § 201.1100, any funds recovered by way of disgorgement, prejudgment interest, and penalties shall be placed in a fair fund for the benefit of investors harmed by the violations.

Payment of civil penalties, disgorgement, and prejudgment interest shall be made no later than twenty-one days following the day this initial decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH

transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or (3) by certified check, bank cashier's check, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address alongside a cover letter identifying Respondent and Administrative Proceeding No. 3-15815: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This initial decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360, 17 C.F.R. § 201.360. Pursuant to that rule, a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule of Practice 111, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The initial decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or motion to correct a manifest error of fact or the Commission determines on its own initiative to review the initial decision as to a party. If any of these events occur, the initial decision shall not become final as to that party.

In addition, Respondent has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend, and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. *Id*.

_____

Brenda P. Murray
Chief Administrative Law Judge