

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84918 / December 21, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 5090 / December 21, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18952

In the Matter of

**THOROUGHbred FINANCIAL
SERVICES, LLC, THOMAS
JENKINS PARKER, and
LAWRENCE RANDALL
“RANDY” HARTLEY,**

Respondents.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 15(b) OF THE SECURITIES
EXCHANGE ACT OF 1934 AND
SECTIONS 203(e), 203(f), AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Thoroughbred Financial Services, LLC (“TFS” or the “firm”), Thomas Jenkins Parker (“Parker”), and Lawrence Randall “Randy” Hartley (“Hartley”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, TFS, Parker, and Hartley have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Sections 203(e), 203(f), and 203(k) of the Investment

Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

These proceedings arise from breaches of fiduciary duty and inadequate disclosures by TFS, a registered investment adviser and broker-dealer, Parker and Hartley in connection with their mutual fund share class selection practices, as well as misleading statements and omissions they made upon revising TFS’s practices after a Commission examination. Between at least October 2012 and August 2016 (the “Relevant Period”), Respondents invested, recommended or held certain advisory client assets in mutual fund share classes that paid fees pursuant to Rule 12b-1 under the Investment Company Act of 1940 (“12b-1 fees”) instead of available, lower-cost share classes of the same funds without 12b-1 fees. TFS (as a broker-dealer) and Parker and Hartley (as TFS registered representatives) received the 12b-1 fees based on these investments. These practices created a conflict of interest, were contrary to Respondents’ disclosures regarding TFS’s Code of Ethics, and were not disclosed adequately to firm clients in TFS’s Forms ADV or otherwise. Respondents also breached their duty to seek best execution for their clients by investing them in mutual fund share classes with 12b-1 fees rather than lower-cost share classes of the same funds. Moreover, by choosing higher-cost share classes for firm clients, TFS, in some client transactions, avoided paying certain mutual fund transaction clearance, or “ticket,” charges that TFS otherwise would have paid.

During the Relevant Period, TFS failed to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder in connection with its mutual fund share class selection practices. Finally, in the process of converting clients to lower-cost share classes after receiving a Commission examination deficiency letter in April 2016, various firm investment adviser representatives (“IARs”), including Parker and Hartley, made misleading statements and omissions to clients about the prior costs and availability of lower-cost share classes, while at the same time asking many of the same clients to agree to higher account management fees, which nearly all clients accepted.

By virtue of this conduct, TFS, Parker, and Hartley willfully violated Section 206(2) of the Advisers Act, and TFS also willfully violated Sections 206(4) and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

¹ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Respondents

1. **TFS**, a Tennessee limited liability company based in Brentwood, Tennessee, has been registered with the Commission as an investment adviser and broker-dealer since August 1999 and January 2000, respectively. TFS provides advisory services through its IARs, most of whom are also registered representatives of TFS's broker-dealer operations. In its March 2018 Form ADV, TFS reported regulatory assets under management of approximately \$1.8 billion.

2. **Parker**, 66 and a resident of Nashville, Tennessee, is President of TFS and has been both an IAR and registered representative of the firm since 2000. While Parker does not have a direct personal ownership interest in TFS, the Parker Family Trust, for which Parker's spouse serves as trustee, holds a fifty (50) percent ownership interest in the firm.

3. **Hartley**, 56 and a resident of Brentwood, Tennessee, has been both an IAR and registered representative of TFS since 2000. Hartley personally holds an eight (8) percent ownership interest in TFS.

Background

4. During the Relevant Period, TFS offered asset management services to its advisory clients through various programs, including programs managed on a discretionary basis by TFS IARs ("TFS Advisory Programs"). Clients paid TFS an asset-based fee for asset management. In addition, TFS agreed to pay any transaction-based fee, or "ticket charge," for the purchase or sale of mutual fund shares in client accounts.

5. Mutual funds typically offer investors different types of shares or "share classes." Each share class represents an interest in the same portfolio of securities with the same investment objective. The primary difference among the share classes is their fee structure.

6. For example, some mutual fund share classes charge 12b-1 fees to cover fund distribution and sometimes shareholder service expenses. These recurring fees, which are included in a mutual fund's total annual fund operating expenses, vary by share class, but typically range from 25 to 100 basis points. They are deducted from the mutual fund assets on an ongoing basis. Recurring 12b-1 fees are paid to the fund's distributor or principal underwriter, which generally remits the fees to the broker-dealer that distributed or sold the shares. TFS typically purchased, recommended, or held client assets in mutual fund share classes that charged 12b-1 fees (hereinafter, "Class A" shares) between 15 to 25 basis points.

7. Many mutual funds also offer share classes that do not charge 12b-1 fees (e.g., "Institutional class" or "Class I" shares, as well as Class F2, Class Y, and Class Z shares (collectively, "Class I shares")).² An investor who holds Class I shares of a mutual fund will usually pay lower total annual fund operating expenses over time – and thus will almost always earn higher returns – than one who holds a share class of the same fund that charges 12b-1 fees.

² Share classes that do not charge 12b-1 fees also go by a variety of other names in the mutual fund industry. As used in this Order, the term "Class I shares" refers generically to share classes that do not charge 12b-1 fees.

Therefore, if a mutual fund offers a Class I share, and an investor is eligible to own it, it is often, though not always, better for the investor to purchase or hold the Class I share.

8. During the Relevant Period, TFS advised clients to purchase or hold³ mutual fund share classes that charged 12b-1 fees when lower-cost share classes of those same funds were available to those clients. TFS received 12b-1 fees that it would not have collected had those clients been invested in the available lower-cost share classes.

TFS's Mutual Fund Share Class Selection Practices

9. During the Relevant Period, TFS's Forms ADV Part 2A ("TFS's Forms ADV") disclosed that TFS "may" receive 12b-1 fees from funds based on certain client investments. While TFS's Forms ADV acknowledged that "[i]n situations where the client has a choice between mutual funds that pay a 12b-1 fee to TFS and others that do not, TFS has a potential conflict of interest," TFS's Forms ADV went on to assure clients that the "TFS Code of Ethics prohibits the TFS representative from preferring his or her interests to those of the client."

10. To supplement TFS's advisory fee, the firm's long-established business practice was to invest client assets in Class A shares, or other similar share classes, keep a portion of the 12b-1 fees and share the remainder of those fees with its IARs. This practice continued as lower-cost share classes for the same funds became available for TFS to purchase for, or recommend to, its clients, despite the firm's disclosures stating that its Code of Ethics prohibited TFS IARs from preferring their own interests to those of their clients. Moreover, between October 2012 and March 2016, TFS never disclosed to clients that it would invest client assets in mutual fund share classes for which TFS received a 12b-1 fee when there was a lower-cost share class available for the same mutual fund.

11. During the Relevant Period, TFS purchased, recommended or held clients in approximately 170 fund-specific share classes with avoidable 12b-1 fees.

Parker and Hartley

12. During the Relevant Period, both Parker and Hartley understood that advisory clients, as a general matter, could avoid 12b-1 fees by investing in Class I shares and other lower-cost share classes of a fund, when such a share class was available to their clients.

13. However, neither Parker nor Hartley regularly reviewed fund prospectus materials in order to assess whether lower-cost share classes for the same mutual fund were available for their clients in TFS Advisory Programs. Instead, Parker and Hartley typically placed their advisory clients, including dozens whom they jointly advised, into higher-cost Class A shares with avoidable 12b-1 fees.

³ In many cases, mutual funds permit certain advisory clients who hold shares in classes charging 12b-1 fees to convert those shares to Class I shares that do not charge 12b-1 fees without cost or tax consequences to the investment adviser's clients when the advisory clients become eligible to own the Class I shares.

14. Further, during the Relevant Period, Parker and Hartley provided their respective advisory clients with Form ADV Part 2B Brochure Supplements (“Supplements”). The Supplements disclosed that both Parker and Hartley received “commissions ... including distribution or service (“trail”) (“12b-1”) fees from the sale of mutual funds. This practice gives [each] an incentive to recommend investment products based upon compensation received, rather than the client’s needs.” As with TFS’s Forms ADV, the Supplements also added that “the TFS Code of Ethics prohibits [each] from preferring his interests to those of the TFS client.”

15. However, both Parker and Hartley failed to disclose in their Supplements that they routinely increased their compensation at the expense of their clients by regularly investing their advisory clients in mutual fund share classes with 12b-1 fees when lower-cost share classes for the same funds were available. The resulting business practices of Parker and Hartley were contrary to the disclosure to clients in their respective Supplements that TFS’s Code of Ethics prohibited such practices.

16. During the Relevant Period, Parker and Hartley were the top two recipients of avoidable 12b-1 fees at the firm.

Failure to Seek Best Execution

17. Section 206 of the Advisers Act imposes on investment advisers a fiduciary duty to act for the benefit of their clients. That duty includes, among other things, an obligation to seek best execution for client transactions. *See, e.g., Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters*, Exchange Act Rel. No. 23170 (Apr. 28, 1986) (stating that money managers, as fiduciaries to their clients, have an obligation to “execute securities transactions for clients in such a manner that the client’s total cost or proceeds in each transaction is the most favorable under the circumstances.”).

18. By causing certain advisory clients to invest in or hold mutual fund share classes that charged 12b-1 fees when such clients were eligible for lower-cost share classes of the same funds, Respondents violated their respective duties to seek best execution for those transactions.

Ticket Charges Avoided

19. Certain mutual fund transactions in TFS client accounts incurred clearance, or “ticket,” charges imposed by the clearing broker-dealer with which TFS had contracted to execute its client transactions. Pursuant to these agreements, TFS paid any required ticket charges for its own clients’ transactions.

20. TFS’s clearing broker-dealer did not impose ticket charges for Class A share transactions of certain mutual funds, but did impose such charges on certain Class I share class transactions. As a result, by purchasing Class A shares for advisory clients, TFS not only benefited from receiving the 12b-1 fees, but, in certain client transactions, also avoided the ticket charges that it would have otherwise paid during the Relevant Period pursuant to the client agreements.

TFS's Policies and Procedures

21. During the Relevant Period, TFS also failed to adopt and implement written policies or procedures reasonably designed to prevent violations of the Advisers Act by its IARs in connection with their share class selection practices for clients. Notably, TFS did adopt a written compliance procedure requiring that firm IARs must “provide a complete and balanced disclosure” to clients including, among other topics, “the distinctions among classes of a multi-class fund.” However, TFS failed to implement the procedure so that it resulted in clients receiving an explanation as to the differences among share classes in which the clients were invested, including an explanation as to whether a share class had 12b-1 fees and whether any conflict of interest was thereby created due to the availability of a lower-cost alternative share class of the same fund without 12b-1 fees.

22. Further, TFS also failed to have in place a reasonably designed process for regularly reviewing fund prospectus materials to assess whether a client had become eligible for conversion to a lower-cost share class without 12b-1 fees.

TFS's 2016 Share Conversions

23. As mutual funds made Class I share classes more widely available prior to and throughout the Relevant Period, those funds also began allowing newly eligible clients holding Class A shares to convert those shares to non-12b-1 fee shares, such as Class I shares, at the request of investment advisers, such as TFS. These so-called “share class conversions” were allowed to occur on a tax-free basis and without any charge or fee to the client or the investment adviser. Over the Relevant Period, TFS could have converted the Class A shares of certain mutual funds held by its clients to Class I shares and thereby reduced client expenses.

24. In May 2016, a compliance inspection and examination by Commission staff resulted in a deficiency letter being issued to TFS concerning the firm's mutual fund share class selection practices. Following receipt of this letter, TFS began a process of converting its clients holding Class A shares to lower-cost share classes (without 12b-1 fees) of the same funds. Because TFS would no longer receive revenue from 12b-1 fees, TFS and its IARs sought to negotiate higher advisory fees with certain of its clients. Ultimately, while some of these clients had no advisory fee increases, many of the clients agreed to pay an additional 10 to 20 basis points or more in advisory fees.

25. During this mid-2016 share class conversion process, certain TFS IARs, without retrospectively assessing the specific funds in which their clients were invested, sent communications to clients containing misleading statements and omissions concerning the prior availability and minimum purchase requirements of Class I shares. Certain of these communications indicated that, prior to the 2016 share class conversions, it was generally not possible to avoid 12b-1 fees without making minimum investments of \$500,000 to \$1,000,000 in Class I shares, omitting that many funds, in which TFS clients were invested, had already waived such minimums for advisory clients, or did not impose such minimums in the first place during the Relevant Period. In fact, many TFS clients who received these 2016 communications, in which certain clients also were asked to accept higher account management fees, previously had incurred numerous avoidable 12b-1 fees from their investments in higher-cost share classes when

lower-cost shares were available. Both Parker and Hartley drafted and sent communications to clients containing misleading statements and omissions.

VIOLATIONS

26. As a result of the conduct described above, TFS, Parker, and Hartley each willfully⁴ violated Section 206(2) of the Advisers Act, which prohibits an investment adviser, directly or indirectly, from engaging “in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client.” A violation of Section 206(2) may rest on a finding of simple negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963)). Proof of scienter is not required to establish a violation of Section 206(2) of the Advisers Act. *Id.*

27. Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder require a registered investment adviser to, among other things, “[a]dopt and implement written policies and procedures reasonably designed to prevent violation” of the Advisers Act and its rules. As a result of the conduct described above, TFS willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder.

28. As a result of the conduct described above, TFS willfully violated Section 207 of the Advisers Act, which makes it “unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission . . . or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

UNDERTAKINGS

29. Notice to Advisory Clients. Within 30 days of the entry of this Order, TFS shall notify affected investors (*i.e.*, those former and current clients who, during the Relevant Period of inadequate disclosure, purchased or held 12b-1 fee paying share class mutual funds when a lower-cost share class of the same fund was available to the client) (hereinafter, “affected investors”) of the settlement terms of this Order in a clear and conspicuous fashion.

30. Certificate of Compliance. TFS shall certify, in writing, its compliance with the undertaking set forth above. The certification shall identify the undertaking, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and TFS agrees to provide such evidence. The certification and supporting material shall be submitted to Stephen E. Donahue, Esq., Assistant Regional Director, U.S. Securities and Exchange Commission, Atlanta Regional Office, 950 East Paces Ferry Road

⁴ A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

NE, Suite 900, Atlanta, Georgia 30326, no later than sixty (60) days from the completion of the undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offers of TFS, Parker, and Hartley, respectively.

Accordingly, pursuant to Sections 15(b)(4) and 15(b)(6) of the Exchange Act and Sections 203(e), 203(f), and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Section 206(2) of the Advisers Act, and TFS also shall cease and desist from committing or causing any violations and any future violations of Sections 206(4) and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

B. Respondents are each censured.

C. Respondents shall pay disgorgement, prejudgment interest, and civil monetary penalties totaling \$1,679,241.88 as follows:

- (i) TFS shall pay disgorgement of \$740,250.20, prejudgment interest of \$108,368.10, and a civil penalty of \$260,000, consistent with the provisions of this Subsection C;
- (ii) Parker shall pay disgorgement of \$217,883.16, prejudgment interest of \$31,750.80, and a civil penalty of \$75,000, consistent with the provisions of this Subsection C.
- (iii) Hartley shall pay disgorgement of \$158,032.42, prejudgment interest of \$22,957.20, and a civil penalty of \$65,000, consistent with the provisions of this Subsection C.
- (iv) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the \$1,679,241.88 in disgorgement, prejudgment interest, and civil penalties paid by Respondents, as described above, for distribution to current or former advisory clients who incurred 12b-1 fees on investments in mutual fund share classes where Respondents could have invested such clients in mutual fund share classes of the same funds without 12b-1 fees during the Relevant Period (each, an "affected investor"). Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the

Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

- (v) Within ten (10) days of the entry of this Order, Respondents shall deposit \$1,679,241.88 of the disgorgement, prejudgment interest, and civil penalties (the "Fair Fund") into an escrow account ("Escrow Account") not unacceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment of disgorgement and prejudgment interest is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600], and if timely payment of the civil penalties is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.
- (vi) TFS shall be responsible for administering the Fair Fund and shall hire a professional not unacceptable to the staff of the Commission, at its own cost, to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by TFS and shall not be paid out of the Fair Fund.
- (vii) TFS shall distribute the amount of the Fair Fund to affected investors pursuant to a disbursement calculation (the "Calculation") that will be submitted to, reviewed, and approved by the Commission staff in accordance with Paragraph (viii) of this Subsection. The Calculation shall be subject to a *de minimis* threshold, as described in Paragraph (ix) below. No portion of the Fair Fund shall be paid to any affected investor account in which Respondents, or TFS's current or former officers, directors, or IARs, have a financial interest.
- (viii) TFS shall, within sixty (60) days of the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval. At or around the time of submission of the proposed Calculation to the staff, TFS, along with any third-parties or professionals retained by TFS to assist in formulating the methodology for its Calculation and/or administration of the distribution, shall make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. TFS shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to TFS's proposed Calculation or any of its information or supporting documentation, TFS shall submit a revised Calculation for the review and approval of the Commission staff or additional

information or supporting documentation within ten (10) days of the date that TFS is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection C.

- (ix) After the Calculation has been approved by the Commission staff, TFS shall submit a payment file (the "Payment File") for review and acceptance by the Commission staff demonstrating the application of the methodology to each affected investor. The Payment File should identify, at a minimum: (1) the name of each affected investor account; (2) the exact amount of the payment to be made from the Fair Fund to each affected investor account; and (3) the amount of any *de minimis* threshold to be applied.
- (x) TFS shall complete the distribution of all amounts payable to affected investor accounts within 90 days of the date the Commission staff accepts the Payment File unless such time period is extended as provided in Paragraph xiv of this Subsection C.
- (xi) If TFS is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor account or any factors beyond TFS's control, TFS shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury in accordance with Section 21F(g)(3) of the Securities Exchange Act of 1934, pursuant to the instructions set forth in Subsection D below, when the distribution of the funds is complete and before the final accounting provided for in Paragraph xiii of this Subsection C is submitted to the Commission staff.
- (xii) A Fair Fund is a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code ("IRC"), 26 U.S.C. §§ 1.468B.1-1.468B.5. TFS shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund's status as a QSF and the Foreign Account Tax Compliance Act ("FATCA"), and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by TFS and shall not be paid out of the Fair Fund.
- (xiii) Within 120 days after TFS completes the distribution of all amounts payable to affected investors, TFS shall return all undistributed funds to the Commission pursuant to the instructions set forth in Subsection D below. TFS shall then submit to the Commission staff a final accounting and certification of the disposition of the Fair Fund for Commission approval, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include: (1) the amount paid to each affected investor account; (2) the date of each payment; (3) the check number or other identifier of money transferred to each account; (4) the amount of any returned payment and the date received; (5) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (6) the total amount,

if any, to be forwarded to the Commission for transfer to the United States Treasury; and (7) an affirmation that TFS has made payments from the Fair Fund to affected investor accounts in accordance with the Payment File approved by the Commission staff. TFS shall submit the final accounting and certification, together with proof and supporting documentation of such payment in a form acceptable to Commission staff, under a cover letter that identifies TFS, Parker, and Hartley as the Respondents in these proceedings and the file number of these proceedings to Stephen E. Donahue, Esq., Assistant Regional Director, U.S. Securities and Exchange Commission, Atlanta Regional Office, 950 East Paces Ferry Road NE, Suite 900, Atlanta, Georgia 30326, or such other address the Commission staff may provide. Any and all supporting documentation for the accounting and certification shall be provided to the Commission staff upon request, and TFS shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

- (xiv) The Commission staff may extend any of the procedural dates set forth in this Subsection C for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except if the last day falls on a weekend or federal holiday, the next business day shall be considered the last day.

D. Payments ordered pursuant to Subsections C(xi) and (xiii) of this Order must be made in one of the following ways:

- (i) TFS may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (ii) TFS may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (iii) TFS may pay 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:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the respective Respondent in this proceeding, and the file number of this proceeding; a copy of the cover letter and check or money order must be sent to Stephen E. Donahue, Esq., Assistant Regional Director, U.S. Securities and Exchange Commission, Atlanta Regional Office, 950 East Paces Ferry Road NE, Suite 900, Atlanta, Georgia 30326.

E. TFS shall comply with the undertakings enumerated in Section III above.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order as to Respondents Parker and Hartley are true and admitted by Respondents Hartley and Parker, respectively, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Parker and Hartley, respectively, under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Parker or Hartley, respectively, of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary