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UNITED STATES OF AMERICA

Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16182

In the Matter of

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

Respondent.

DIVISION OF ENFORCEMENT'S PREHEARING SUBMISSION

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Pursuant to Rule of Practice 222, and in compliance with the Court's January 14, 2015 Scheduling Order, the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "Commission") hereby makes its Prehearing Submission.

I. INTRODUCTION

This matter concerns the fraudulent offer and sale of investments in land "conservation easements" by Paul Edward "Ed" Lloyd, Jr. ("Lloyd" or "Respondent"), a North Carolina-based certified public accountant ("CPA") and tax-planner. Until March 2013, Lloyd also was a registered representative and associated person of LPL Financial, LLC ("LPL"), a broker-dealer and investment adviser registered with the Commission.

Under the Internal Revenue Code, the owners of land that is set aside as a conservation easement may obtain a tax deduction equal to the difference between a hypothetical best-use of the preserved land (*e.g.*, use for a residential sub-division) and the lower existing value of the undeveloped land. Investing in a land-conservation easement occurs when an investor, for the purpose of obtaining the benefit of a tax deduction, acquires an interest in land that is then set aside for conservation purposes. The value of the tax deduction resulting from the easement is typically

a multiple of the value of the ownership units purchased (*e.g.*, a $50,000 purchase of ownership units may generate a $200,000 tax deduction, leading to a net profit in the form of tax savings that are greater than the funds used to acquire the ownership units).

Between August 2012 and December 2012, Lloyd induced seventeen of his tax-planning clients, including four clients who also were investment advisory clients of LPL (Ray Branch, Tim Goss, Lee Powell and Larry Price), to purchase a total of $632,500 of interests in a limited liability company and special purpose vehicle that Lloyd created and controlled, called Forest Conservation 2012, LLC ("Forest Conservation 2012"). Lloyd represented to his clients that, through Forest Conservation 2012, he would pool their funds and purchase units in a private Regulation D offering of an unrelated entity named Piney Cumberland Holdings, LLC ("Piney Cumberland") which planned to use the investor funds raised to acquire a controlling interest in a third-party entity with rights to land that was expected to be preserved later through a conservation easement. Lloyd further represented to these seventeen clients that, once the easement took effect, Forest Conservation 2012 would obtain a singular tax deduction that Lloyd would then allocate proportionally (*i.e.*, on a *pro rata* basis) among those holding interests in Forest Conservation 2012.

In fact, Lloyd's offering was a fraud. Lloyd advised his clients as to the purchase of and sold to his tax-planning and advisory clients a total of $632,500 of interests in Forest Conservation 2012. Lloyd, as the investment advisor to Forest Conservation 2012, LLC, also advised the fund to use only $502,500 of the client funds raised to purchase ownership units of Piney Cumberland. Lloyd misappropriated the remainder of $130,000 in client funds from the Forest Conservation 2012 account, to which Lloyd was providing investment advisory services. The funds that he stole were the aggregated investment of three of his tax-planning clients: Chris Brown, James "Rusty"

Carson III and Michael Malloy. When Lloyd was required to identify the members of Forest Conservation 2012 to establish their accredited-investor status for the Regulation D offering, he identified only fourteen of the investors (four of whom were also the LPL advisory clients), along with himself, and never disclosed the existence of the three clients whose money he stole. After receiving contribution checks from all seventeen clients whom Lloyd solicited to participate in Forest Conservation 2012, Lloyd then drafted and signed the Forest Conservation 2012 Operating Agreement to which he attached a schedule of only 15 investors (fourteen investors plus himself), omitting the names of the three clients whose funds he misappropriated. Of the $130,000 that Lloyd diverted, he transferred $105,750 to other bank accounts that he or his current spouse controlled, and then claimed the remainder, or $24,250, as part of his own fraudulently-inflated personal investment in Forest Conservation 2012 on accredited-investor paperwork that he provided to The Strategic Financial Alliance ("SFA"), the broker-dealer sponsoring Piney Cumberland's Regulation D offering.

After Lloyd became aware that the Commission staff was looking into his Forest Conservation 2012 offering in March 2013, Lloyd took additional steps to conceal his scheme. Specifically, after Forest Conservation 2012 received its tax deduction based on its ownership interest in Piney Cumberland, Lloyd then prepared in May 2013 and distributed to all seventeen of his clients (including the four who also were advisory clients) and to himself individual IRS Schedule K-1s that were misstated. To the three tax-planning clients whose money he stole, Lloyd gave Schedule K-1s that allocated a tax deduction that none of the three clients had earned because their funds were not used to acquire ownership interests in Forest Conservation 2012 in their names, they were not listed on the Forest Conservation 2012 Operating Agreement as owning any interests in the entity, and they were never identified to, or approved by, SFA as accredited

investors. To the remaining fourteen clients, Lloyd sent Schedule K-1s that understated the deductions that they should have earned—a result of him having to allocate across all seventeen clients an aggregate tax deduction from Piney Cumberland that in actuality was based on his use of only fourteen clients' funds, plus his own falsely inflated contribution, to purchase units in Piney Cumberland. As a result, these fourteen clients – including the four advisory clients – should have received larger tax deductions than they ultimately acquired.

Between December 2011 and December 2012, Lloyd also offered and sold interests in two other Lloyd-created special purpose vehicles similar to Forest Conservation 2012. While Lloyd does not appear to have misappropriated investor funds in those offerings, Lloyd did collect fees from the investors, ranging from $4,500 to $7,500 per client. The manner in which Lloyd ran these other two offerings differs from the Forest Conservation 2012 offering, thus evidencing Lloyd's knowing use of a fraudulent scheme to trick his clients. None of Lloyd's three Forest Conservation offerings was sponsored by LPL.

The Division alleges that Lloyd, as relates to Forest Conservation 2012, violated the prohibited transactions provisions in Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act").

II. RESPONDENT AND RELEVANT ENTITIES

A. Paul Edward "Ed" Lloyd, Jr., CPA ("Lloyd"), 51 and a resident of Waxhaw, North Carolina, is a North Carolina-licensed CPA, and tax planner and preparer. Between October 2006 and March 2013, he also was a registered representative and investment advisory representative of LPL. During the Forest Conservation 2012 fraud, Lloyd provided his accounting, tax planning, and tax preparer services through Ed Lloyd & Associates, PLLC, which he solely owns and controls. Lloyd separately provided brokerage and investment advisory services through

the Charlotte branch office of LPL, for which he was the only employee of the branch office. On March 7, 2013, Lloyd resigned from LPL amid LPL's internal review of Lloyd's involvement in selling interests in the Forest Conservation entities and while the SEC Exam Program examined Lloyd's office. Lloyd holds FINRA Series 6, 7, 24, 65 and 66 licenses.

B. Forest Conservation 2012, LLC ("Forest Conservation 2012") is a Wyoming limited liability company formed by Lloyd in 2012 to pool investor funds from various tax-planning and investment-advisory clients in order to buy Piney Cumberland membership units. Lloyd was the managing member of Forest Conservation 2012 and the sole signatory on the Forest Conservation 2012 bank account into which he deposited, and from which he misappropriated, investor funds. Lloyd also provided advisory services to Forest Conservation 2012, advising the entity as to how much of its client funds should be used to purchase Piney Cumberland membership units.

C. Piney Cumberland Holdings, LLC ("Piney Cumberland") is a Tennessee limited liability company formed for the purpose of acquiring ownership interests in undeveloped land owned by a separate entity called Piney Cumberland Resources, LLC ("PCR"). Between October 2012 and December 2012, Piney Cumberland engaged in a private placement offering under Rule 506(b) of Regulation D, offering for sale membership units in itself. This offering was sponsored by The Strategic Financial Alliance ("SFA"), a broker-dealer registered with the Commission.

III. FACTS

A. Background

In 2011, Lloyd learned of conservation easements as a possible tax-saving device from Nancy Zak ("Zak"), a conservation easement specialist and registered representative of SFA. At the time, SFA, among other things, was in the business of sponsoring various private placement

offerings of membership units in entities that were raising funds in order to acquire ownership interests in third-party entities which held large tracts of real estate as their main assets. These third-party entities would then seek to place their real estate holdings into conservation easements, generating for the entities' owners, *i.e.*, the investors in the offerings, generous tax deductions. Such offerings, as structured by SFA, typically required a minimum threshold investment for individual investors to participate and, thereby, acquire membership units.

Although these offerings were marketed as a means to obtain a tax deduction—indeed, that is what motivated investors to invest in them—the offering documents distributed by SFA typically made clear to investors that there were no guarantees on how the underlying land would be used. For example, once an entity raised sufficient investor funds to acquire controlling membership units in a certain tract of land, the entity would allow its members to determine how the land would be used, *i.e.*, for investment purposes (*e.g.*, residential lot or golf course development) or preserved through a conservation easement. Under Section 170(h) of the Internal Revenue Code, the owners of land that is set aside through a conservation easement may obtain a tax deduction equal to the difference between an appraised best-use of the preserved land (*e.g.*, use for a residential sub-division or commercial structure) and the lower existing value of the undeveloped land. The offering summaries of the real estate equity investments for which Lloyd pooled investor funds and purchased membership units made clear that the entities were under no obligation to create conservation easements and could ultimately opt, upon member approval, to develop the land acquired for investment purposes. Once the offerings closed, the purchasers of the membership units held real-estate equity interests in Regulation D exempt securities, according to the Forms D which the offering entities filed with the Commission.

In order to offer conservation easements investments to his tax clients, Lloyd created limited liability companies for the purpose of pooling individual investor funds and making a single acquisition of membership units through the private placements. Lloyd's plan—and in fact what he did, as described below—was for his limited liability companies to receive a tax deduction based on their bundled investments in the private placements after conservation easements were granted on the land tracts, and for Lloyd to then apportion that deduction among the investors in his Forest Conservation limited liability companies on *a pro* rata basis.[1]

B. Forest Conservation 2011

Lloyd's first offer and sale of real-estate-related investments occurred in 2011. Specifically, in or around December 2011, Lloyd learned from Zak that SFA was offering opportunities to invest in an entity called Maple Equestrian, LLC, a Georgia limited liability company that was raising investor funds to acquire controlling interest in certain land for the granting of a conservation easement. Lloyd then created Forest Conservation 2011, and, in December 2011, offered and sold $347,480 in interests to ten tax-planning clients, two of whom were also LPL investment advisory clients of Lloyd. Through Forest Conservation 2011, Lloyd pooled the clients' funds and acquired 20 percent of the Maple Equestrian membership units.

Lloyd required his tax clients to pay him a flat transaction fee, separate from the $347,480 raised, of either $4,500 or $5,000 each for investing in Forest Conservation 2011. Lloyd described this fee in writing to clients by various names, such as a "fee," a "program fee," or "implementation and associated costs." Lloyd also sent three clients a stand-alone invoice for their

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[1] This Court held that the offerings in this matter other than Forest Conservation 2012 were not securities. The Division intends to make an offer of proof with respect to these offerings pursuant to Rule 321(b) in the event there is an appeal of the initial decision to the Commission. Moreover, evidence of the manner by which Lloyd collected fees for the other investments is still relevant for the Division's remaining claims in that it differs drastically from the method by which Lloyd assessed and collected purported fees for Forest Conservation 2012. The stark differences supports the Division's claim that Lloyd's "fees" supposedly imposed in the Forest Conservation 2012 offering are actually a sham meant to conceal his fraudulent misappropriation of client funds.

"strategic tax plan" of $5,000. Lloyd also participated as an individual in the Forest Conservation 2011 offering, using $30,000 of the $31,500 that he collected in fees from his clients as his own contribution to the purchase of Maple Equestrian ownership units by Forest Conservation 2011.

Lloyd deposited the client checks into the bank account for Ed Lloyd & Associates, PLLC at Branch Banking and Trust Company ("BB&T"). LPL did not sponsor the Forest Conservation 2011 offering and was never made aware of this or the other Forest Conservation offerings as they were occurring. Ultimately, the Alabama land which Maple Equestrian acquired was preserved through a conservation easement, and Maple Equestrian issued a tax deduction to Forest Conservation 2011 based on the 20 percent of membership of units that Forest Conservation 2011 held in Maple Equestrian. Lloyd then issued Schedule K-1s to his ten clients and himself based on their *pro rata* ownership in Forest Conservation 2011 and prepared his clients' income taxes using the K-1s.

C. Forest Conservation 2012

In 2012, Zak informed Lloyd of a new real-estate-related offering by Piney Cumberland, for which SFA was serving as the broker. Piney Cumberland sought to acquire controlling interest, through the raising of investor funds, in a tract of approximately 439.86 acres of undeveloped land in Van Buren County, Tennessee, owned by PCR. Zak explained to Lloyd that Piney Cumberland was being created for the purpose of selling units of membership in itself to accredited investors. Once a requisite amount of units were sold, Piney Cumberland would acquire between 95.20 and 95.99 percent ownership interest in PCR. The manager of Piney Cumberland would then recommend to Piney Cumberland members to pursue either an investment proposal, such as the development of the land into residential lots for sale or, in the alternative, a conservation easement proposal.

As with similar SFA-sponsored offerings, the Offering Summary explained that Piney Cumberland was under no obligation to grant a conservation easement for any interest in land the company acquired. Zak, through an email by her assistant, told Lloyd that the expected return for the investors in such offerings, in the event of a conservation easement, was a tax deduction equal to approximately 4.25 times the value of each investor's contribution to Forest Conservation 2012.

Zak also informed Lloyd that, unlike the 2011 offering, SFA had decided to impose two additional compliance requirements on Lloyd because of his use of special purpose vehicles (*i.e.*, LLCs) to aggregate and invest his clients' funds. Specifically, in a 2012 email, Zak told Lloyd that he could not charge management fees to his clients participating in the offering, and he would need to provide to SFA with client account forms for each of his participating clients so that SFA, in turn, could make sure that each of his investors in the special purpose vehicle was an accredited investor.

As he previously had done in 2011, Lloyd created a limited liability company—this time calling it Forest Conservation 2012—for the purpose of aggregating his clients' investment contributions, along with a contribution of his own, and making a single purchase of membership units in Piney Cumberland's offering. Between August 2012 and December 2012, Lloyd raised a total of $632,500 from seventeen of his tax-planning clients, including the four clients who were also LPL investment advisory clients. Unlike his Forest Conservation 2011 offering, Lloyd did not request that any clients provide him a second check for any tax-planning service fees. In fact, no evidence has been identified to show that Lloyd told any clients of his purported tax-planning fees *in writing* before they wrote checks to Forest Conservation 2012. Lloyd did tell his clients that Forest Conservation 2012 would purchase membership units in the Piney Cumberland offering, ultimately leading to a tax deduction for Forest Conservation 2012 from an anticipated

conservation easement. Forest Conservation 2012 would then provide each investor his or her *pro rata* share of the deduction based on an individual's contribution, and this deduction, Lloyd told investors verbally or in emails, would exceed the amount clients invested in Forest Conservation 2012.

In order to assess each investor's suitability for participation in the Piney Cumberland offering, SFA provided Lloyd with paperwork via e-mail for each individual Forest Conservation 2012 investor to complete, including Lloyd, and return for SFA's review. Through these documents, SFA planned to confirm each person was an accredited investor with sufficient assets and net worth to participate in the private offering, which requires much less in the way of disclosures under federal securities laws than would an offering to *unaccredited* investors. Investors, including Lloyd himself as a participant, were to indicate their annual income and their individual "amount of purchase" through participation in Forest Conservation 2012. Lloyd distributed the paperwork to all seventeen of his clients who were contributing to Forest Conservation 2012. The clients returned the paperwork to Lloyd. However, Lloyd ultimately, in December 2012, only submitted *final* paperwork for himself and fourteen of the clients to SFA – but not for Brown, Carson and Malloy. The paperwork submitted for these fourteen clients indicated that the "amount of purchase" in the Piney Cumberland offering for each Forest Conservation 2012 participant matched the exact dollar amount of each person's check written to Forest Conservation 2012, *i.e.*, no fees were deducted out.

At one point, Lloyd provided Carson's paperwork as a potential investor to Zak for review. This led Zak to email Lloyd on December 6, 2012 with various questions, including a request for Lloyd to indicate the amount Carson was investing. Lloyd responded to Zak by e-mail the next day on December 7, 2012—which was just three days after Lloyd deposited Carson's check into

the Forest Conservation 2012 bank account—telling Zak that Carson was "OUT" [emphasis in original] of Forest Conservation 2012. Wanting to confirm that she understood what Lloyd meant, Zak then emailed Lloyd the same day for further clarification, writing: "Carson is not participating, correct?" To this, Lloyd responded promptly: "Correct."

On December 7, 2012, Lloyd deposited $16,802 into the Forest Conservation 2012 bank account for his own participation in the offering. At this point, all seventeen of Lloyd's clients who were pooling their money in Forest Conservation 2012 had already provided their funds, totaling $632,500, to the Forest Conservation 2012 account via checks deposited by Lloyd. Also on December 7, 2012, Lloyd advised Forest Conservation 2012, LLC, to wire $543,552 from the Forest Conservation 2012 bank account to the escrow account for Piney Cumberland (as opposed to the total amount of $649,302 that was raised, consisting of $632,500 from the seventeen clients and $16,802 from Lloyd himself). Lloyd then e-mailed Zak "a schedule of contributions by person" for Forest Conservation 2012. The schedule included the names of only fourteen investors and Lloyd. The total amount of contributions was listed as $543,552 (including $41,052 of funds listed in Lloyd's name), and the itemized amount of contribution listed for each of Lloyd's fourteen clients matched the full amount of funds that each of those fourteen clients (not including Brown, Carson and Malloy) had sent to Forest Conservation 2012 without any tax-service fees deducted, adding up to a total of $502,500 for those fourteen clients.

Lloyd misappropriated the $130,000 provided by his other three tax-planning clients (Brown, Carson and Malloy). He did this in two parts. First, Lloyd's individual contribution was listed on paperwork Lloyd submitted to SFA as $41,052, which was $24,250 higher than the amount Lloyd deposited into the account. Second, he transferred the remaining $105,750 to other business accounts that he or his current spouse controlled, writing checks from the Forest

Conservation 2012 account. The schedule Lloyd provided to Zak made no mention of the three tax-planning clients who had provided the $130,000.

Also on December 7, 2012, Lloyd emailed Zak an Operating Agreement for Forest Conservation 2012 listing Lloyd as the only member holding 100 percent of the membership interests. Zak wrote back to Lloyd, sending him an email from the attorney for Piney Cumberland, Peter Hardin, who asked for an Operating Agreement showing all the sub-investors in Forest Conservation 2012, writing: "[T] hey need to amend their Operating Agreement to reflect that new ownership on Schedule I and resend it to us." Later, on December 10, 2012, Lloyd e-mailed Zak the final version of the Forest Conservation 2012 Operating Agreement, dated December 7, 2012, which included an updated Schedule I of investors as an attachment. This schedule included only Lloyd and the fourteen investors (not listing Brown, Carson and Malloy) for whom Lloyd had returned finalized accredited investor paperwork to SFA. Each of the fourteen listed investors was noted on the schedule as having a percentage of ownership in Forest Conservation 2012 based on that individual's entire investment (full check amount *minus no fees*) which mirrored each person's percentage of contribution to the $543,552 wired to Piney Cumberland. Lloyd's percentage of ownership on the schedule, 7.55 percent, was based on his alleged $41,052 contribution to the $543,552 wire even though his actual contribution of $16,802 in non-misappropriated funds represented only 3.09 percent of $543,552.

On December 11, 2012, Piney Cumberland issued a subscription agreement to Forest Conservation 2012 for the purchase of 228 units (23.76 percent of ownership) of the offering. The unit purchase price was listed as $543,552, which was the amount Lloyd had wired to Piney Cumberland's escrow account. On December 26, 2012, the PCR tract of land was donated as a

conservation easement to Foothills Land Conservancy. In March 2013, a certified land appraiser, having appraised the conserved land, concluded the value of the easement was $10,132,000.

Also in March 2013, the Commission's National Exam Program visited Lloyd's LPL branch office in Charlotte and inquired about the Forest Conservation entities, including Forest Conservation 2012 and its purchase of $543,552 of the Piney Cumberland membership units. The Exam Program asked for underlying documents from Lloyd. Before any documents were provided, Lloyd resigned from LPL on March 7, 2013. Then, through counsel, Lloyd produced to the Exam staff a Forest Conservation 2012 Operating Agreement listing him as the only member holding *100 percent* of the interests in the entity, as well as a separate chart listing *all seventeen clients* from whom Lloyd collected checks, each having a "fee" deducted out of the alleged contribution amount for each of the seventeen clients. The chart also listed Lloyd as a Forest Conservation 2012 participant and indicated his contribution was $16,802. This production by Lloyd, for the first time in writing by Lloyd at that point in time, indicated that Brown, Carson and Malloy had written checks to Forest Conservation 2012. The Division, through document subpoenas, subsequently obtained the actual final version of the Forest Conservation 2012 Operating Agreement, dated December 7, 2012, listing only fifteen participants in Forest Conservation 2012 (with no mention of Brown, Carson or Malloy).

Piney Cumberland later issued a Schedule K-1 (IRS Form 1065), indicating that Forest Conservation 2012 was receiving a roughly $2.2 million tax deduction based on its percentage of ownership units in Piney Cumberland. In May 2013, Lloyd then issued individual Schedule K-1s, through Forest Conservation 2012, to all seventeen of his clients who had provided contributions to the Forest Conservation 2012 bank account, including the three clients (Brown, Carson and Malloy) who were not listed on the Forest Conservation 2012 Operating Agreement, who never

acquired ownership interests in Forest Conservation 2012 in their own names, and whose identity was never disclosed to SFA. Lloyd also issued a Schedule K-1 to himself. As their tax preparer, Lloyd then prepared and submitted income tax filings for all seventeen clients, using the Schedule K-1s he had created.

As manager of Forest Conservation 2012, Lloyd issued *pro rata* pass-through tax deductions to: (i) fourteen clients who received tax deductions based on lower levels of ownership interests than they had actually purchased in Forest Conservation 2012 (a result of Lloyd needing to "spread" across all seventeen clients a tax deduction that was based on an investment with only fourteen clients' money and his own inflated funds); (ii) three clients (Brown, Carson and Malloy) who received tax deductions they never earned because Lloyd misappropriated their funds and never made them a part of Forest Conservation 2012; and (iii) Lloyd himself, based on his purported personal investment of $16,802—the portion of his investment that was actually his money, and not the $41,052 that he initially claimed pursuant to the entity's Operating Agreement and his accredited-investor paperwork.

D. Fraudulently Misstated Schedule K-1s

As noted above, the Schedule K-1s issued to Brown, Carson and Malloy, respectively, were false because these three investors did not hold any ownership interests in Forest Conservation 2012 per the entity's Operating Agreement, and their money was diverted by Lloyd for his own use. Further, the Schedule K-1s issued by Forest Conservation 2012 to the other fourteen investors known to SFA also were false. Those K-1s, knowingly prepared with their fraudulent content and issued by Lloyd in May 2013 as manager of Forest Conservation 2012, understated the tax deductions earned by these fourteen clients, four of whom were LPL advisory clients of Lloyd's. Respondent did not base the deductions on the amounts that each of these

fourteen investors provided to Forest Conservation 2012, but on a lower amount dictated by his need to allocate across seventeen clients the deduction received from Piney Cumberland.

IV. LEGAL ARGUMENT

A. Respondent violated the prohibited transactions provisions of Sections 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940.

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

An investment adviser is defined by Section 202(a)(11) of the Advisers Act as someone who in return for compensation, engages in the business of advising others as to the advisability of investing in, purchasing, or selling securities. Lloyd entered into advisory contracts with his LPL clients providing him with discretionary authority to trade securities for them. Lloyd has admitted in this matter that participants in Forest Conservation 2012 included some of his LPL advisory clients. Further, Lloyd's individual role as an unregistered investment adviser – activity which was hidden from LPL – is evidenced by his creation, identification and recommendation of the Forest Conservation 2012 offering to his pre-existing advisory clients (*i.e.*, Lloyd alone advised his clients to invest in Forest Conservation 2012). Lloyd also served as an investment adviser to the Forest Conservation 2012 fund, advising the fund as to which securities to purchase and how much,

resulting in his trading of the fund's assets in exchange for the purchase of membership units in the real estate equity offering by Piney Cumberland. The subsequent misappropriation of investor funds by Lloyd from the Forest Conservation 2012 account served as his compensation for advising the Forest Conservation 2012 fund and his LPL clients.

The Division will show that Lloyd violated Sections 206(1), Section 206(2) and Section 206(4) by misappropriating the assets of his client, the Forest Conservation 2012 fund, which he advised on how to invest. Instead of advising the fund to use all its assets to acquire membership units in Piney Cumberland, Lloyd misappropriated $130,000 which had been provided by Brown, Carson and Malloy, collectively, for Forest Conservation 2012 to use in the acquisition of Piney Cumberland membership units. Further, pursuant to his cover-up scheme attempting to conceal the misappropriation, Lloyd also violated the prohibited transactions provisions of the Advisers Act by making misrepresentations and omissions of material fact to his four advisory clients participating in the Forest Conservation 2012, LLC concerning, among other things, the amount each individual was investing and the size of each individual's *pro rata* ownership interest in Forest Conservation 2012. As noted above, Lloyd acted with the required scienter to establish a charge under Section 206(1).

Lloyd established, employed and operated a scheme or business through interstate commerce using Forest Conservation 2012 to offer or sell securities to individuals in different states, and fraudulently declaring to Brown, Carson and Malloy that their funds would be used on their behalf in order to acquire membership interests in the real-estate-related offerings. As such, Lloyd's advisory client, Forest Conservation 2012, was also defrauded of funds that were intended for use in the Piney Cumberland investment. Lloyd never gave SFA finalized accredited investor paperwork for the three clients (Brown, Carson and Malloy) whose money he stole, and, therefore,

Lloyd kept them from participating in the offering and from acquiring membership interests in the Forest Conservation 2012 entity. As noted above, when Zak asked Lloyd whether Carson was participating in the Forest Conservation 2012 offering, Lloyd responded to Zak that Carson was "OUT." Further, Lloyd knew that he had collected a total of $632,500 from seventeen clients for participation in Forest Conservation 2012. However, he only advised the entity to use $543,552 to buy Piney Cumberland units. Lloyd ultimately tried to cover up his scheme by issuing Schedule K-1s to all seventeen clients, thereby diminishing the ownership interests owed to the fourteen investors known to SFA, including the four LPL advisory clients.

Lloyd's misstatements and omissions, described above, were material because they concerned the very nature of the investment offered and sold by Lloyd to individuals who gave funds to Forest Conservation 2012. SEC v. Research Automation Corp., 585 F.2d 31, 35-36 (2d Cir. 1978) (misleading statements and omissions concerning the use of money raised from investors are material as a matter of law). Further, Lloyd, through emails, informed investors who were approved as accredited investors in Forest Conservation 2012 that their entire contribution amounts were going toward acquiring ownership interests in the real estate offerings, and Lloyd did not communicate in writing to these individuals, prior to their investing, that he would be claiming a portion of their contribution checks as his tax-planning fees, as he now contends was the case. These statements were all material as there is a substantial likelihood that such information about the actual amount used for contribution purposes would have been significant in the deliberations of a reasonable investor. SEC v. Reynolds, 2010 WL 3943729, *3 (N.D. Ga. 2010). As a result, Lloyd violated the prohibited transactions provisions of the Advisers Act by employing a device, scheme or artifice to defraud his clients or prospective clients, by engaging in a transaction, practice or course of business which operated as a fraud or deceit on his clients or

prospective clients, and by engaging in an act, practice or course of business which was fraudulent, deceptive or manipulative.

B. Respondent's scheme is not permitted under Wyoming state law for limited liability companies because Respondent's efforts to amend the Forest Conservation 2012 Operating Agreement were merely part of his attempt to conceal his misappropriation of client funds.

Respondent argues that Wyoming law allows for an LLC operating agreement to be oral or implied and that failing to include Brown, Carson and Malloy on the Forest Conservation 2012 operating agreement was merely a clerical error and did not preclude their participation. Respondent is incorrect because more than a mere clerical error was afoot. Lloyd initially did not have any explanation as to the lack of Brown, Carson and Malloy from the Operating Agreement when confronted with the question during his sworn testimony before the staff on February 6, 2014 (DOE Exh. 144 at page 109, lines 4-9):

> **MR. BASINGER:** Now, Mr. Lloyd, why is it that there are 15 individual investors listed here on Schedule I within Exhibit No. 9, because we saw earlier there were 18 individual investors listed in Exhibit 8 for the Forest Conservation 2012 LLC?
>
> **THE WITNESS:** I don't know.

Respondent, moments later in his sworn testimony, latched on to his scrivener's error excuse for his scheme (DOE Exh. 144, page 111, lines 1-5):

> **MR. BASINGER:** Mr. Lloyd, did you intentionally leave Mr. Brown, Mr. Malloy, and Mr. Carson off of Schedule I in Exhibit No. 9?
>
> **THE WITNESS:** Not to my recollection. It looks like I've got an error.

For Lloyd's "clerical error" argument to be believed, one would have to accept that the "error" continued and lasted for months, from the fall of 2012 until the spring of 2013, including

the drafting of an Operating Agreement that failed to include Brown, Carson and Malloy and which incorrectly inflated the contribution amounts of the other fifteen individuals listed on the document. The error also would have to encompass Lloyd's emails to Zak noting only 15 investors in Forest Conservation 2012 and Lloyd's direct response to Zak that Carson was "OUT" of Forest Conservation 2012 and not participating, only days after Lloyd deposited Carson's check into the Forest Conservation 2012 bank account.

Further, the error would have to include Lloyd's assertion that he, a licensed CPA and professional tax-preparer, made a $24,250 clerical error when he initially claimed a *personal* investment of $41,052 in Forest Conservation 2012, but, after the SEC examined his office in March 2013, he later realized his mistake and only issued himself a tax deduction in May 2013 based on the $16,802 for which he actually wrote a check. However, almost eleven months later in February 2014, when asked during sworn testimony about the amount of his personal contribution, Lloyd could not explain or recall why he initially told SFA he was providing $41,052, but later claimed in his response to the Commission's Exam staff that he gave $16,802 (DOE Exh. 144, Page 120, line 24, through Page 121, line 5):

> **MR. BASINGER:** Thank you. Mr. Lloyd, now that you've had some time to look over Exhibits 8, 9 and 10, can you tell me, what is your – your theory of what happened to the funds that – I'm sorry, the investment contributions that came in and why we have two differing amounts for you of $16,802 on one document in Exhibit No. 8 and the $41,052 in Exhibit 10?
>
> **THE WITNESS:** I do not recall at this time.

At this point in February 2014, when Respondent provided sworn testimony to the staff, he had already prepared his own 2012 Schedule K-1 and he should have known why he based his

Forest Conservation 2012 participation on a personal contribution of $16,802 instead of $41,052. To believe Respondent's "clerical error" argument, one would also have to accept that the "error" also included the fact that finalized accredited investor paperwork for Brown, Carson and Malloy never made its way from Lloyd to SFA and Lloyd, who prepared and sent the finalized Operating Agreement to Zak three times in December 2012, left off three names each time. It strains credulity to argue that one could not have looked at the Forest Conservation 2012 Operating Agreement that Lloyd provided to Zak in 2012 and noticed whether 15 investors or 18 investors were listed as participating in Forest Conservation 2012.[2]

Furthermore, Lloyd's new version of the Operating Agreement (the "Amendment and Correction to Operating Agreement of Forest Conservation 2012, LLC") was prepared and signed *after* the SEC's Wells Notice of June 17, 2014 to Lloyd. The document appears to reflect an attempt by Lloyd to convince investors to sign on to a version of events that they could not independently know is true.[3] Wyoming Law allows for LLC records filed with the state to be corrected "if at the time of filing the record contained inaccurate information or was defectively signed." Wyo. Stat. Ann. § 17-29-206 (2010). However, Wyoming law does not condone after-the-fact corrections or implied readings of an LLC operating agreement *to conceal a fraud.* The provision of fraudulent information to the state in LLC filings is grounds for the deeming of the

[2] The Division believes that Lloyd's motive for the fraud stemmed from his struggling financially in the months following his June 2012 wedding – when he was already paying child support and other monies to a prior spouse – and notes that Lloyd had to repeatedly tap a bank line of credit in the months leading up to the misappropriation from clients in December 2012.

[3] Further underscoring the lack of any written disclosure by Lloyd of any fee prior to the Forest Conservation 2012 offering, Lloyd testified under oath in this matter that after his clients received document subpoenas in 2013 from the Commission concerning the 2012 offering, he "had to explain to them ... what the contribution amount was. I had to explain the whole process to them. It had been over a year or so. They don't remember those details." Lloyd Tr. at page 126.

LLC as defunct, transacting business without authority, and in forfeiture of its articles of organization. Wyo. Stat. Ann. § 17-29-705(c) (2010).

Though Lloyd argues an implied operating agreement might exist including Brown, Carson and Malloy, it should be noted that, as Tom Long, Esq., wrote on page 7 of his Report, filed as Exhibit 9 to Respondent's Motion for Summary Disposition, "Wyoming courts have in the past denied enforcement of various contractual provisions in furtherance of equitable principles involving a duty of good faith and fair dealing, honesty and reasonableness, unconscionability, materiality, commercial impracticability, and other factual circumstances leading a court to find enforcement to be inequitable." The final list of Forest Conservation 2012 participants was established when Lloyd created the Operating Agreement listing fifteen investors and wired the entity's funds to Piney Cumberland's account to buy ownership units. The subsequent attempts to argue for implied Wyoming law remedies and the inclusion of Brown, Carson and Malloy as participants owning interests in Forest Conservation 2012 are just part of Lloyd's ongoing cover-up designed to conceal his fraud. Accordingly, Respondent violated the prohibited transactions provisions in Sections 206(1), 206(2) and 206(4) of the Advisers Act.

V. RELIEF REQUESTED

A. Cease-and-Desist

Section 203(k) of the Advisers Act authorizes the Commission to enter an order requiring that any person that violated any provision of the Advisers Act or is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing such violation or any future violation of the same provision, rule or regulation. Accordingly, based upon the evidence that will be presented at the hearing in this matter, the Court should order Respondent to cease and desist from committing

or causing violations of or any future violations of Sections 206(1), 206(2) and 206(4) of the Advisers Act.

B. Civil Penalties and Disgorgement Plus Prejudgment Interest

Section 203(i) of the Advisers Act allows the Commission to impose a civil penalty in proceedings instituted pursuant to Section 203(f) of the Advisers Act. Accordingly, based upon the evidence that will be presented at the hearing, the Court should order that Respondent pay civil penalties. Section 203(j) of the Advisers Act allows the Commission to enter an order requiring disgorgement, including prejudgment interest, in administrative proceedings in which the Commission may impose a money penalty. Section 203(k)(5) of the Advisers Act allows the Commission to enter an order requiring disgorgement, including prejudgment interest, in administrative proceedings in which the Commission may impose a cease-and-desist order. Accordingly, based upon the evidence that will be presented at the hearing, the Court should order that the Respondent pay disgorgement plus prejudgment interest.

C. Bar

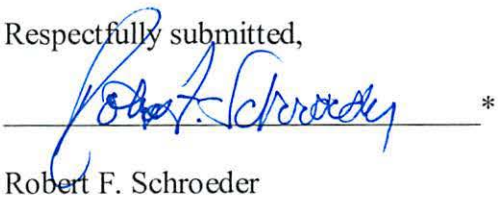
Under Section 203(e) of the Advisers Act, the Commission can censure, suspend, revoke the registration, or otherwise limit the activities of any investment adviser who has willfully violated or aided and abetted violations of the federal securities laws or any rules or regulations, thereunder. Section 203(f) of the Advisers Act authorizes the Commission to censure, suspend, bar or otherwise limit the activities of any person associated with any investment adviser. Accordingly, based upon the evidence that will be presented at the hearing in this matter, the Court should bar Respondent Lloyd from the securities industry.

VI. CONCLUSION

For the foregoing reasons, and based upon the evidence to be presented by the Division at the hearing, the Court should find that Respondent violated the above-named prohibited transaction provisions of the Advisers Act and grant relief as requested herein.

This 9th day of March, 2015.

Respectfully submitted,



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*By my signature, I certify that this document complies with the length limitation of Rule 154. The word count of this brief, excluding the table of contents, table of authorities, and certificate of service, is 6,999 words.

CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the foregoing document by UPS overnight mail and/or electronic mail, as specified below:

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