



**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.

**RESPONDENT'S PROPOSED  
CORRECTIONS FOR MANIFEST  
ERROR OF FACT IN INITIAL DECISION  
(RULE 111(h))**

Respondent Paul Edward "Ed" Lloyd, Jr., CPA respectfully proposes the following corrections to the Initial Decision dated July 27, 2015 to correct manifest errors of fact:

- 1) Page 6, 1<sup>st</sup> full paragraph.

Erroneous Statement: "Each of the three conservation easements in suit involved a property owner who created a limited partnership which issued membership units pursuant to Reg D. Tr. 99-100, 445-46; Div. Exs. 151, 152, 153. The three limited partnerships/issuers and their associated Reg D offerings were named Maple Equestrian, LLC (Maple Equestrian), Piney Cumberland Holdings, LLC (Piney Cumberland), and Meadow Creek Holdings, LLC (Meadow Creek)."

Correct Statement: "Each of the three conservation easements in suit involved a property owner who created a limited liability company that issued membership units. Tr. 99-100, 445-46; Div. Exs. 151, 152, 153. The three limited liability companies were named Maple Equestrian, LLC (Maple Equestrian), Piney Cumberland Holdings, LLC (Piney Cumberland) and Meadow Creek Holdings, LLC (Meadow Creek). Div. Exs. 151, 152, 153."

- 2) Page 8, 1<sup>st</sup> full paragraph.

**Erroneous Statement:** "The grant of these conservation easements caused the Maple Equestrian and Meadow Creek partnerships to issue to FC 11 and FC 12-II, respectively, Internal Revenue Service (IRS) schedule K-1s reflecting losses as to the underlying conserved property, and thereafter Lloyd created K-1s for each investor in the Forest Conservation entities reflecting losses, which were the basis of the deductions his clients took on their annual tax returns."

**Correct Statement:** "The grant of these conservations easements caused Maple Equestrian, LLC and Meadow Creek, LLC to issue to FC 11 and FC 12-II, respectively, Internal Revenue Service (IRS) schedule K-1s reflecting substantial charitable contributions arising out of the underlying transaction, and thereafter Lloyd created K-1s for each participant in the Forest Conservation entities reflecting their share of the charitable deduction and small operating losses, which were in turn deducted by his clients on their annual tax returns."

- 3) Page 19, Section "E.", 3<sup>rd</sup> paragraph.

**Erroneous Statement:** "The participation in SFA-Broker private offerings by his clients and himself and Lloyd's failure to inform LPL of them, were inconsistent with LPL's compliance policies relating to selling away, outside business activities and providing tax advice."

**Correct statement:** The statement should be omitted in its entirety.

- 4) Page 20, 4<sup>th</sup> full paragraph.

**Erroneous statement:** "Lloyd did not provide OCIE with the revised schedule I, listing 15 members, that he had provided to SFA and the Piney Cumberland issuer on both December 10 and 11 of 2012."

Correct statement: "Lloyd provided OCIE with the operating agreement including the revised schedule I, listing 15 members, that he had provided to SFA and the Piney Cumberland issuer on both December 10 and 11, 2012. See Respondent's Exhibit 123, pages 600-628"

5) Page 22, 2<sup>nd</sup> paragraph.

Erroneous Statement: "Branch and Lloyd's attorneys discussed fees Lloyd charged, among other things. Tr. 1102."

Correct Statement: "Branch and Lloyd's attorneys discussed the fees Lloyd charged, among other things, but not until after Branch had responded to the Division's subpoena. Tr. 1097; line 14, Tr. 1102. Branch knew that the check that he wrote Ed Lloyd included a fee of \$6,500.00, at the time he wrote it. Tr. 1089-90."

6) Page 24, 2<sup>nd</sup> paragraph.

Erroneous Statement: "However, Losby testified that he turned to Lloyd when he first received the document subpoena from commission staff, meaning Lloyd had the opportunity to influence Losby's memory of his FC12 participation. Tr. 937-38, 942-43."

Correct Statement: "While Losby also testified that he turned to Lloyd when he first received a document subpoena from the Commission staff, Losby testified that he did not discuss his fee with Lloyd (Tr. 938-39), and that he knew at the time he wrote the check that the check included a fee of \$6,500.00 (Tr. 941). The letter that he wrote to the Division in response to the subpoena, Division Exhibit 134, was written by himself without any input from Lloyd."

7) Page 24, 4<sup>th</sup> paragraph.

Erroneous Statement: "Like Losby, however, Price was in contact with Lloyd just after receiving a document subpoena from the Commission staff. Tr. 1117-19."

Corrected Statement: Although Price contacted Lloyd after receiving a document subpoena from Commission staff, he did not discuss the fee that was a part of the contribution. Tr. 1109-10,1118."

8) Page 28, 4<sup>th</sup> paragraph.

Erroneous Statement: "Make no mistake, Lloyd may not have issued true and correct K-1s absent the focus on him in early 2013 by LPL and OCIE. See response reply at 9-10. It is entirely possible, that had LPL and OCIE never examined Lloyd, he would have stolen \$130,000.00 from his clients outright."

Correct Statement: "Lloyd could not have issued K-1s for Forest Conservation 2012 LLC at the time of the LPL inspection or the OCIE examinations in March, 2013. He did not receive the K-1s for Forest Conservation 2012, LLC, from Piney Cumberland Holdings, LLC until May 2013, and he completed the K-1s for the individuals who participated in Forest Conservation 2012 that same month. The receipt of the K-1 from Piney Cumberland Holdings, LLC was necessary before the K-1s for the individual participants in Forest Conservation 2012 could be prepared. Respondent's Exhibit 24, 25, Tr. 887-888."

9) Page 29, 3<sup>rd</sup> paragraph.

Erroneous Statement: "The independent contractor-like autonomy he possessed while associated with LPL made him much more like a controlling person of an investment advisor than an employee of an investment advisor..., further with respect to his advisory clients, Lloyd

engaged in conduct virtually indistinguishable from that than of an unregistered investment advisor. It would be anomalous if Lloyd could only be held secondarily liable for conduct that would warrant primary liability for an unregistered investment advisor." (citations omitted).

Correct Statement: The statement should be entirely omitted.

10) Page 29, 3<sup>rd</sup> paragraph.

Erroneous Statement: "It would be particularly anomalous if he could avoid primary liability by the simple expedient of selling away."

Correct Statement: The incorrect statement should be omitted.

11) Page 32, 4<sup>th</sup> paragraph.

Erroneous Statement: (Omission): The court failed to take official notice of (or even rule upon) the request made by Respondent or for the following information requested on May 1, 2015:

1. The number of cases that the SEC's Enforcement Division has brought as administrative proceedings before an administrative law judge in the past two years (years ending September 30, 2014 and 2013).
2. Of the cases noticed in (1), the number of cases in which there has been a finding in favor of the Respondent.
3. Of the cases noticed in (1), the number of cases in which there has been a finding in favor of the Division, in whole or in part, in the past two years.
4. The number of initial decisions by ALJ Cameron Elliot from October 1, 2012 to the present in favor of the Respondent.

5. The number of initial decisions by ALJ Cameron Elliot from October 1, 2012 to the present in which the initial decision found for the Division, in whole or in part.

Correct Statement: The court should take official notice of the statistics requested in Respondent's request for official notice and they should be included in the decision.

12) Page 33-4, paragraph beginning at the bottom of page 33.

Erroneous Statement: "More specifically, Lloyd's failure to inform SFA and Piney Cumberland of the identities of the ultimate customers undermined those entities' compliance efforts, created a risk that they may violate the suitability and disclosure provisions of the securities laws, and, in Carson's case, potentially created a conflict of interest between SFA and Merrill Lynch."

Correct Statement: The statement should be omitted in its entirety.

13) Page 35, 3<sup>rd</sup> paragraph.<sup>1</sup>

Erroneous Statement: "Lloyd's own testimony establishes, but for his deceit of the SFA, his clients could not have participated in FC12 and he would not have been entitled to his fees. Tr. 809, 812-13. Thus, the amount he was enriched as a result of his deceit, \$105,750.00 should be disgorged. Div. Exs. 67, 102, 109, 110, 187."

Correct Statement: Lloyd's own testimony, and the weight of the evidence, establishes that but for his deceit of SFA, Carson, Brown and Malloy would not have participated in FC12 and he would not have been entitled to the

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<sup>1</sup> Respondent continues to argue that no disgorgement is appropriate, and that no improper benefit was received. However, the court proposes to order disgorgement of fees that would not have been obtained "but for" the misrepresentation to SFA. If such is the court's decision, the factual predicate should reflect only those fees relating to the misrepresentation, not unrelated fees

fees received from them. Tr. 809, 812-13. The total of those fees was \$20,500.00. Thus, the amount he was enriched as a result of his deceit, \$20,500.00 – should be disgorged.” Div. Exs. 187

14) Page 36, 2<sup>nd</sup> paragraph.

Erroneous Statement: “On the other hand, although there was no demonstrated harm to Lloyd’s clients, and the Piney Cumberland interests were not securities, by circumventing the compliance processes at SFA and Piney Cumberland, Lloyd created a risk that those entities would violate the securities laws.”

Correct Statement: “There was no demonstrated harm to Lloyd’s clients and the Piney Cumberland interests were not securities.”

WHEREFORE, having moved for correction of manifest errors of fact, as stated herein, Respondent asks the initial decision be corrected as set forth in this motion.

This the 6 day of August, 2015.



Frederick K. Sharpless  
Attorney for Respondent

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**CERTIFICATE OF SERVICE**

I certify that the **RESPONDENT'S PROPOSED CORRECTIONS TO IN INITIAL DECISION ERROR OF FACT (RULE 111(h))** was served upon the parties to this action by mailing a copy thereof by first-class, postage pre-paid mail to the following counsel of record:

Honorable Cameron Elliot  
Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Mr. Brent J. Fields (Original & 3 copies)  
Secretary of Commission  
Securities and Exchange Commission  
100 F Street N.E.  
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Mr. Robert F. Schroeder  
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This the 6 day of August, 2015.

  
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