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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.

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

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ARGUMENT

Respondent Paul Edward "Ed" Lloyd, Jr., CPA offers the following brief in support of his proposed corrections to the Initial Decision dated July 27, 2015 to correct manifest errors of fact:

1) Page 6, 1st 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."

Argument: The three entities, Maple Equestrian, LLC, Piney Cumberland Holdings, LLC and Meadow Creek Holdings LLC are limited liability companies, not limited partnerships, which are different form of legal entity with materially different governing law. The reference to "limited partnership" is in error and no evidence that the entities were limited partnerships was ever adduced. The three exhibits cited, the Form D's, explicitly declare the entities to be limited liability companies and not limited partnerships. Please also refer to the Private Offering Summaries for each

entity and the attached documentation, DOE Exhibits 22 (Maple Equestrian), 55 (Meadow Creek) and 56 (Piney Cumberland).

Insofar as the erroneous statement also declares that membership units were issued "pursuant to regulation D," in light of the prior determination that the membership units were not securities, they could not have been offered "pursuant to Regulation D," which exempts from registration only certain qualified offerings of **securities.** See 15 U.S.C 77d(a)(5); 15 U.S.C. 77e. An interest in a limited liability company that is not a "security" is not subject to the securities laws, or Regulation D, at all. SFA's erroneous belief that the interest might have been a security does not make it one, and it has been determined in this action that it was not.

2) Page 8, 1st 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."

Argument: The statement reflects an erroneous understanding of the deductibility of a conservation easement donation by a participant in a pass through entity. The landowning entity makes a donation of a conservation easement. This entitles it to a charitable deduction. It is not a loss. The K-1's issued by Meadow Creek, Piney Cumberland Maple equestrian all show "0" ordinary income or loss, but large "other deductions" under code "C" (charitable contributions). See Respondents Exhibit 8 (Maple Equestrian K1 to FC 2011), Respondents Ex. 24, (Piney Cumberland K1 to FC 2012) and Ex. DOE 129 (Maple Equestrian K1 to FC 2012 II). The Forest Conservation entities in turn issued K1's to their members passing through the charitable deduction, and a small operating loss reflecting the transaction costs. See Respondents Ex. 9 (FC 2011 K1's), 25 (FC 2012 K1's) and DOE Ex. 128 (FC 2012 II K1's).[1] Refer also generally to Lloyd's testimony, Tr. 835-860, in particular Tr. 841-3;

3) Page 19, Section "E.", 3rd 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.

Argument: Because the participation offered in Maple Equestrian, Piney Cumberland and Meadow Creek was not a security, Lloyd's offering of that

[1] As a practical matter, large "losses" to passive participants in a pass-through entity would not be deductible against other income due to the passive activity and related rules. The transactions value to a taxpayer-participant depends on the nature of the charitable deduction, not on an ordinary "loss."

to his clients was not "selling away," either by FINRA rule, or according to the compliance manual, both of which refer to private **securities** transactions. See also Dethlefsen Testimony (Tr. 319) referring to **securities** transactions. As to tax advice, Lloyd's CPA and tax practice was disclosed to LPL and reflected on the BrokerCheck report, and as noted by the court, was known to and there was no objection from LPL. The finding made by the court seems to simply parrot the Division's factually unsupported argument and is erroneous. Because it was a part of his disclosed CPA practice, it was not an "outside business activity" that Lloyd failed to disclose.

4) Page 20, 4th 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."

Argument: The statement is simply, patently false (perhaps reflecting an unsupported contention made repeatedly by the Division). The document that the finding says was NOT provided was a part of Respondents Exhibit 123, at pages 601-628 (CD marked as Exhibit 624), a letter to OCIE April 5, 2013, from Lloyd's attorney.

5) Page 22, 2nd 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."

Argument: This Statement reflects a contention (or innuendo) advanced repeatedly by the Division, without any factual support, that the responses of Lloyd's clients were somehow influenced by Lloyd or his counsel (If the government believes that to be true there are appropriate legal pathways to raise that issue). The statement omits relevant information required to make it not a misrepresentation; Branch's uncontested testimony that his discussions occurred after the responded to the subpoena (Tr. 1097, 1102) and that he knew the fee at the time he wrote the check (Tr. 1089-90). Moreover, several clients testified specifically that Respondent did not help them draft their letters or suggest language to include in their response. (Losby 942:5, Hooks 1080:16-1081:1, Price 1110:7-12, Goss 1133:20-1134:12.)

6) Page 24, 2nd 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."

Argument: See previous argument. The initial decision selectively recounts facts to suggest an improper influence by Lloyd or his counsel of the testimony of several witnesses. In fact, the witness confirmed his independent and uninfluenced recollection. See Losby's testimony at Tr. 938-39, 941, and Division Exhibit 134.

7) Page 24, 4th 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."

Argument: Again, the finding suggests improper influence and conduct thorough a selective and incomplete recitation of the evidence. See Price testimony at Tr. 1109-1110 and 1118, Division Ex. 140.

8) Page 28, 4th 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"

Argument: The Initial decision adopts one of the fantastical hypotheses of the Division, and repeats it as a speculative conclusion of what might have happened. There is not one shred of evidence to support this speculative statement. There is no evidence that Lloyd ever defrauded or took money from any client, or that he had any motive to do so. Furthermore, it ignores the fact that K-1's for individual participants could not have been prepared until the K-1's was received from Piney Cumberland, which the uncontested evidence showed was in May, 2013. See Respondents Ex. 24, Lloyd Testimony Tr. 887-88.

9) Page 29, 3rd 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.

Argument: The statement has no factual support in the record. There is no factual support for a conclusion concerning Lloyd's supposed autonomy, authority or ability to influence, and none was cited. The nature of Lloyd's relationship with LPL and his autonomy (or not) was never discussed, nor was the nature of any investment advisory service he provided to a very small number of clients ever explored. LPL's knowledge (or not) of Lloyd's practice was not explored, except it was clear that LPL was aware of his accounting practice (see above). On a number of occasions in the initial decision, and at the hearing, the court stated that Lloyd as an "associated person" with a Registered Investment Advisor, LPL. By definition, he was at most an "associated person." 15 U.S.C. § 80b-2(a)(17) (2014). There is simply no factual predicate for the finding that he was "like" an independent contractor, or that he had any "control" over LPL (a finding that he was an independent contractor and yet in "control" of the Investment Advisor, LPL is fundamentally inconsistent, anyway.

10) Page 29, 3rd 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.

Argument: See above discussion of "selling away." There is no evidence whatsoever that Lloyd was "selling away" because the interests and Forest Conservation 2012 were not "securities," nor were they even investments. To be "selling away" Lloyd would have to be selling **securities,** and he was not.

11) Page 32, 4th 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.

Argument: Respondent requested that the court take official notice of the foregoing statistics, which are within the knowledge of and easily accessible to the Commission and the ALJ. The ALJ had failed to rule upon the request and has instead cited the absence of evidence of partiality that official notice of such statistics would reveal. If it is the intent of the ALJ to

(improperly) deny the request for official notice respondent requests that the ALJ do so, otherwise, the requested information should be officially noticed. No privilege or statutory confidentiality protects the information for which Respondent requested the ALJ take official notice.

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.

Argument: Because neither the participation in Piney Cumberland Holdings or Forest Conservation 2012 constituted the purchase of the "security" there was no risk of interfering with SFA or Piney Cumberland Holdings' efforts at compliance with regulation D or securities laws, that they would violate suitability or disclosure provisions, or create any conflict of interest, and no evidence whatsoever in the record was cited showing how such a violation, or conflict of interest, might occur. The statement is based on an incorrect factual premise, (that the transactions involved the purchase or sale of a security) and is any event, entirely speculative. There was no evidence adduced of how the absence of such information might have thwarted proper and required compliance efforts.

13) Page 35, 3rd paragraph.[2]

[2] 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

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 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.

Argument: The statement rests upon a speculative premise, that had Carson, Brown and Malloy not participated in the Forest Conservation 2012 entity the transaction between Forest Conservation 2012 and Piney Cumberland Holdings, LLC would not have occurred. The testimony cited does not support this speculative conclusion. Indeed, as Lloyd testified, one option was to reduce total participation of FC 2012 in Piney Cumberland, have money wired returned (consistent with testimony of Piney Cumberland's attorney), return Carson, Brown and Malloy's funds to them, and simply participate in a lesser amount with money received from the 15 participants. Lloyd would still have received fees from the other 15 participants, and would have forgone only the fees from Carson. Brown and Malloy, a total of $20,500 (See Division Ex 187).

14) Page 36, 2nd paragraph.

"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

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."

Argument: Because neither the participation in Piney Cumberland Holdings or Forest Conservation 2012 constituted the purchase of the "security" there was no risk of interfering with SFA or Piney Cumberland Holdings' efforts at compliance with regulation D or securities laws, and no evidence whatsoever in the record was cited showing how such a violation, or conflict of interest, might occur. The statement is based on an incorrect factual premise, (that the transactions involved the purchase or sale of a security) and is any event, entirely speculative. There was no evidence adduced of how the absence of such information might have thwarted proper and required compliance efforts.

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.

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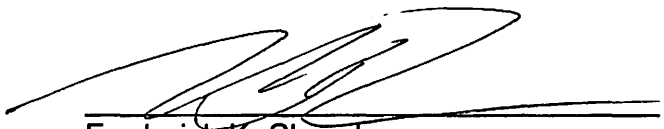
CERTIFICATE OF COMPLIANCE

The signature of respondent's attorney below certifies that, in compliance with the requirements of Securities Exchange Commission Rule 154(c), the word count for the BRIEF IN SUPPPORT PROPOSED CORRECTIONS FOR MANIFEST ERROR IN INITIAL DECISION filed with the Securities and Exchange Commission on August 6, 2015, contains a total of 3,088 words, as reported by the word processing program used to prepare the respondent's brief.

This the 6 day of August, 2015.



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CERTIFICATE OF SERVICE

I certify that the **RESPONDENT'S BRIEF IN SUPPPORT PROPOSED CORRECTIONS FOR MANIFEST ERROR IN INITIAL DECISION (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:

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