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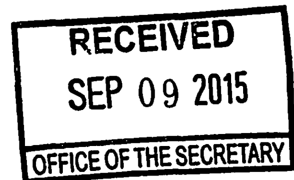

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS
File No. 3-16730

In the Matter of **REID S. JOHNSON** **Respondent.**	**RESPONDENT REID S. JOHNSON'S ANSWER TO ALLEGATIONS SET FORTH IN THE ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940**

I.

Pursuant to SEC Rules of Practice § 220, respondent Reid S. Johnson ("Respondent") hereby submits the following in answer to each of the allegations contained in the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940 (the "Order"). Capitalized terms not specifically defined in this Answer have the meaning ascribed to such terms in the Order.

II.

A. RESPONSE TO SUMMARY ALLEGATIONS

1. Respondent admits the allegations set forth in Paragraph II.A.1. of the Order, except Respondent denies any violation unless specifically admitted herein.

2. Respondent admits that the managing members of certain pooled investment vehicles (the "Managing Members") had custody of certain client funds and securities during the period referenced. Respondent denies that The Planning Group of Scottsdale, LLC ("TPGS") violated the Custody Rule because it failed to accurately determine the securities over which it had custody; failed to insure the securities were maintained by a qualified custodian; and failed to obtain adequate surprise examinations. Respondent further denies that TPGS violated the Compliance Rule, that he aided and abetted or caused TPGS's violations of the Custody Rule or the Compliance Rule, or that TPGS and Johnson willfully or

otherwise made materially false representations in TPGS's Forms ADV filed from 2010 through 2012.

B. RESPONSE TO ALLEGATIONS REGARDING RESPONDENT

3. Respondent admits the allegations set forth in Paragraph II.B.3. of the Order.

C. RESPONSE TO ALLEGATIONS REGARDING OTHER CLAIMED RELEVANT ENTITIES

4. Respondent admits the allegations set forth in Paragraph II.C.4 of the Order.

5. Respondent admits the allegations set forth in Paragraph II.C.5 of the Order.

6. Respondent admits the allegations set forth in Paragraph II.C.6 of the Order.

7. Respondent admits the allegations set forth in Paragraph II.C.7 of the Order.

8. Respondent admits the allegations set forth in Paragraph II.C.8 of the Order.

9. Respondent admits the allegations set forth in Paragraph II.C.9 of the Order.

10. Respondent admits that StarkSchenkein, LLP ("StarkSchenkein") was engaged to perform surprise audits for TPGS for the 2010, 2011, 2012 calendar years. Respondent does not have sufficient information to admit or deny the remaining allegations regarding StarkSchenkein.

D. RESPONSE TO ALLEGATIONS REGARDING FACTUAL BACKGROUND

1. Response to Allegations Regarding Integration of TPGS and the Managing Members

11. Respondent denies that TPGS and the Managing Members did not conduct themselves as separate entities in dealing with outside parties or failed to observe corporate formalities. Respondent admits that TPGS and the Managing Members had ownership,

operational, capitalization, and advisory overlap, but denies that they operated as a single integrated investment advisor with the pooled investment vehicles as clients.

12. Respondent admits that he was the owner, president, and managing director of TPGS and owned and controlled 100% of Oak Canyon and Meridian Services and 50% of Eagle Creek Management.

13. Respondent admits that TPGS and the Managing Members operated from a shared physical location, located at 8800 North Gainey Center Drive, and that TPGS paid the rent for these offices.

14. Respondent admits that certain TPGS employees were co-signatories on bank accounts belonging to Oak Canyon and Meridian Services. Respondent admits that certain inter-company transactions among TPGS, Oak Canyon, Meridian Services, and Eagle Creek Management occurred.

15. Respondent admits that he provided investment advice on behalf of TPGS and that TPGS's clients were advised to invest in the pooled investment vehicles. Respondent admits that a significant number of investors in the pooled investment vehicles were TPGS advisory clients.

16. Respondent denies that TPGS and the Managing Members did not conduct themselves as separate entities in dealing with outside parties.

17. Respondent denies that TPGS and the Managing Members failed to observe corporate formalities or that there were no policies or procedures in place to protect investment advisory information.

18. Respondent admits that TPGS was required to follow the requirements of the Advisers Act with respect to the pooled investment vehicle. Respondent denies the remaining allegations set forth in Paragraph II.D.18. of the Order.

2. Response to Allegations Regarding TPGS Having Custody Over Advisory Clients' Funds and Securities

19. Respondent denies the allegations set forth in Paragraph II.D.19 of the Order.

20. Respondent admits the allegations set forth in Paragraph II.D.20 of the Order.

21. Respondent admits the allegations set forth in Paragraph II.D.21 of the Order.

22. Respondent admits the allegations set forth in Paragraph II.D.22 of the Order.

23. Respondent admits the allegations set forth in Paragraph II.D.23 of the Order.

24. Respondent admits the allegations set forth in Paragraph II.D.24 of the Order.

25. Respondent admits the allegations set forth in Paragraph II.D.25 of the Order.

3. Response to Allegations Regarding Johnson Willfully Aided and Abetted and Caused TPGS's Violations of the Custody Rule During 2010-2012

26. Respondent admits that he was chief compliance officer during a majority of the time from 2010 through 2012, and denies that he did not have formal training regarding the Custody Rule or have familiarity with the Custody Rule that would be expected of a compliance professional.

27. Respondent admits that TPGS concluded that it had to obtain surprise examination of assets belonging to IPE, Eagle Creek Fund, the GIS3 Programs, and the Investor A Trust. Respondent denies that TPGS did not take any action to comply with the 2009 amendments to the Custody Rule until late 2010.

28. Respondent admits the allegations set forth in Paragraph II.D.28. of the Order.

29. Respondent admits the allegations set forth in Paragraph II.D.29. of the Order.

30. Respondent admits that TPGS engaged StarkSchenkein to conduct surprise examinations in 2012 and denies that surprise examinations were not conducted in 2012.

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31. Respondent denies the allegations set forth in Paragraph II.D.31 of the Order.

32. Respondent denies the allegations set forth in Paragraph II.D.32 of the Order.

33. Respondent admits that the StarkSchenkein engagement letter was deficient, but denies that such deficiency caused TPGS to obtain inadequate independent verification through surprise examinations of custody of client funds and securities by an independent public accountant within the meaning of the Custody Rule.

34. Respondent admits that the 2010 surprise examination was conducted in 2011, which was based upon the advice of StarkSchenkein that such examination was sufficient to cause TPGS to comply with the Custody Rule for 2010.

35. Respondent denies that he willfully aided and abetted and caused TPGS's violations of the Custody Rule.

36. Respondent denies the allegations set forth in Paragraph II.D.36 of the Order.

4. <u>Response to Allegations Regarding TPGS Lacked Adequate Compliance Policies and Procedures Regarding Custody</u>

37. Respondent that TPGS had a written Compliance Manual, which was in the process of being edited and revised to address the 2009 amendments to the Custody Rule?

38. Respondent admits TPGS's Compliance Manual was in the process of being edited and revised to address the 2009 amendments to the Custody Rule.

39. Respondent denies that TPGS violated the Compliance Rule or that he willfully aided and abetted and caused TPGS's violations of the Compliance Rule.

40. Respondent denies the allegations set forth in Paragraph II.D.40 of the Order.

5. <u>Response to Allegations Regarding Johnson Made False Representations on TPGS's Forms ADV Filed in 2010, 2011 and 2012</u>

41. Respondent admits the allegations set forth in Paragraph II.D.41 of the Order.

42. Respondent denies the allegations set forth in Paragraph II.D.42 of the Order.

43. Respondent denies the allegations set forth in Paragraph II.D.43 of the Order.

44. Respondent denies the allegations set forth in Paragraph II.D.44 of the Order.

45. Respondent denies the allegations set forth in Paragraph II.D.45 of the Order.

46. Respondent denies the allegations set forth in Paragraph II.D.46 of the Order.

47. Respondent denies that any misrepresentations or omissions regarding the Custody Rule in the required disclosures in Form ADV were material.

E. RESPONSE TO ALLEGATIONS REGARDING VIOLATIONS

48. Respondent denies the allegations set forth in Paragraph II.E.48 of the Order.

49. Respondent denies the allegations set forth in Paragraph II.E.49 of the Order.

50. Respondent denies the allegations set forth in Paragraph II.E.50 of the Order.

F. AFFIRMATIVE AND OTHER DEFENSES

51. Any conduct alleged in the Order that occurred more than five years prior to the filing of the Order is barred by the applicable statute of limitations, and there is no jurisdiction to rule upon such conduct.

52. At times alleged in the Order, Respondent acted diligently, reasonably, and in good faith hired/retained and reasonably relied upon the advice and opinions of consultants and of Wesley N. Stark, CPA ("Stark") and StarkSchenkein (Stark and StarkSchenkein are collectively referred to as the "Accountants"), and others employed by, or working under the direction of such consultants and the Accountants. At all times relevant to these proceedings, including those alleged in the Order, Stark held a Series 28 securities license and Stark and StarkSchenkein, *inter alia,* were engaged to perform surprise audits for TPGS and to render professional advice regarding compliance or lack of compliance by TPGS and its principals, including Respondent, regarding the Custody Rule and other aspects of compliance by TPGS and Respondent, with the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and other applicable securities statutes, rules, regulations and directives.

53. Respondent is informed and believes and therefore alleges that the advice and recommendations of the Accountants, as reasonably relied upon by Respondent, may have been wrong and negligent, and as a direct and proximate result thereof, caused Respondent to be subject to many of the complaints and charges brought against him by the Commission in these proceedings, including those identified in the Order.

54. Respondent is informed and believes and therefore alleges that the Accountants have agreed and consented to an Order to be entered against them in the Matter of Wesley N. Stark, CPA and StarkSchenkein, LLP pending before the Commission as

Administrative Proceeding File No. 3-16731 (the "Accountant Proceedings"), a copy of which is attached hereto as Exhibit A and by reference made a part hereof.

55. Many of the actions, inactions and conduct of Respondent as alleged in the Order occurred as a direct and proximate result of the negligent and wrongful conduct of the Accountants, upon whose advice, recommendations, and work product were reasonably relied upon by Respondent.

56. Respondent in good faith reasonably accepted the Accountants' advice, recommendations, and work product with no knowledge that such advice, recommendations, and work product may have been inaccurate, incomplete, wrong, and in violation of applicable securities laws, rules, regulations, and directives. Respondent at no time intended to violate any securities law, rule, regulation, or directive; acted reasonably under the circumstances; and the actions, inactions, and conduct of the Accountants provides, among other things, mitigating circumstances, including mitigating circumstances which should eliminate or reduce the monetary, equitable, and other relief sought by the Commission in these proceedings.

57. Respondent is informed and believes and therefore alleges that the appointment of the Administrative Law Judge to these proceedings may be unconstitutional and in violation of the Appointments Clause of Article II of the United States Constitution.

58. Equitable relief sought by the Commission is barred by application of the principles of laches and good faith reliance on the advice of the Accountants and reasonable reliance thereon.

59. Any monetary relief sought against Respondent by the Commission, the recovery of which Respondent denies should be awarded, should be reduced by amounts ordered to be paid by the Accountants in the Accountant Proceedings.

III.

GENERAL DENIAL

To the extent that any of the allegations set forth in the Order have not been expressly admitted in the above, all such allegations are denied.

WHEREFORE, Respondent Reid S. Johnson requests that the relief sought in the Order be denied, that the proceedings be dismissed against Respondent, and for such other and further relief as may be just and proper.

Respectfully submitted,

SHERMAN & HOWARD L.L.C.

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Attorneys for Respondent

DATED: September 8, 2015

EXHIBIT A

In the Matter of Wesley N. Stark, CPA and StarkSchenkein, LLP, File No. 3-16731

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75627 / August 6, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3674 / August 6, 2015

INVESTMENT ADVISERS ACT OF 1940
Release No. 4162 / August 6, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16731

In the Matter of WESLEY N. STARK, CPA and STARKSCHENKEIN, LLP, Respondents.	ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 4C OF THE SECURITIES EXCHANGE ACT OF 1934, SECTION 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 4C[1] of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(k) of the

[1] Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have

Investment Advisers Act of 1940 ("Advisers Act"), and Rule 102(e)(1)(ii) of the Commission's Rules of Practice,[2] against Wesley N. Stark, CPA ("Stark") and StarkSchenkein, LLP ("StarkSchenkein") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934, Section 203(k) of the Investment Advisers Act of 1940, and Rule 102(e) of the Commission's Rules of Practice, 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 finds[3] that:

Summary

1. This matter involves violations by Respondents in failing to adequately complete requisite surprise examinations pursuant to Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder. The Planning Group of Scottsdale, LLC ("TPGS"), a former registered investment adviser, and its founder, sole owner, president, managing director, and chief compliance officer, Reid S. Johnson ("Johnson"), had custody of client funds and securities and was required by the Custody Rule to have an independent public accountant conduct annual surprise examinations to verify those funds and securities. For 2010, 2011 and 2012, TPGS retained StarkSchenkein LLP to perform the surprise examinations. Stark and StarkSchenkein accepted the TPGS engagements despite lacking the necessary knowledge of, and experience with,

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> engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

[2] Rule 102(e)(1)(ii) provides, in pertinent part, that:

> The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

[3] 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.

the Custody Rule. By failing to complete the 2010 and 2011 surprise examinations adequately, and by failing to complete the 2012 surprise examination or withdraw therefrom, Stark and StarkSchenkein caused TPGS's Custody Rule violations and engaged in improper professional conduct under Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

Respondents

2. Wesley N. Stark, CPA ("Stark"), age 77, resides in Denver, Colorado. Stark is a founding partner and former owner of public accounting firm StarkSchenkein, LLP. Although Stark sold his 60% ownership interest effective July 1, 2012, he remained a partner of the firm and continued to work part-time. Stark holds a Series 28 securities license. Stark has active CPA licenses in Colorado and New Mexico and inactive CPA licenses in Washington, Idaho, Missouri and New York. Stark was the engagement partner for the surprise examinations that StarkSchenkein performed for TPGS for 2010, 2011, and 2012.

3. StarkSchenkein, LLP ("StarkSchenkein") is a Colorado limited liability partnership headquartered in Denver, Colorado. StarkSchenkein was a full service public accounting firm that provided auditing and accounting, tax, business valuation and legal and business consulting services to a variety of clients including broker-dealers and public companies. StarkSchenkein had four partners, three of whom were CPAs, and Stark was one of two audit partners. StarkSchenkein registered with the PCAOB in 2003. StarkSchenkein was engaged to perform surprise examinations for TPGS for 2010, 2011 and 2012.

Other Relevant Entities

4. Reid S. Johnson resides in Scottsdale, Arizona. Johnson was the founder, sole owner, president, and managing director of TPGS, and the president and sole owner of former registered broker-dealer Meridian United Capital, LLC ("MUC"). Johnson also served as TPGS's chief compliance officer in 2010, 2011 (excluding a period of approximately seven months during which another employee held this position) and 2012. Johnson holds Series 7, 24, 63 and 65 licenses. In October 2013, Johnson received a 45-day suspension from FINRA in connection with a private placement offering for which MUC acted as placement agent, where he was suspended for withdrawing $300,000 from escrow before MUC had satisfied the minimum sales contingency for the offering.

5. TPGS is an Arizona limited liability company with its principal place of business at 8800 North Gainey Center Drive, Suite 176, Scottsdale, Arizona. It was founded by and is 100% owned by Johnson. TPGS registered with the Commission as an investment adviser in July 2006. In June 2012, Johnson sold TPGS's investment advisory business with respect to individual clients. TPGS filed a Form ADV-W to withdraw its registration with the Commission on March 28, 2013.

6. MUC is an Arizona limited liability company with its principal place of business at 8800 North Gainey Center Drive, Suite 176, Scottsdale, Arizona. MUC registered with the Commission as a broker-dealer in July 2002 under a different name; Johnson and a partner purchased the broker-dealer in June 2003 and renamed it MUC. Johnson became the sole owner of

MUC in December 2011. MUC withdrew its registration with the Commission effective December 15, 2012.

7. Insured Private Equity I, LLC ("IPE") was founded by Johnson to make investments in microcap and start-up companies and to acquire certain single premium immediate annuities and life insurance policies. IPE's managing member is Oak Canyon Capital, Inc. ("Oak Canyon"), which is solely owned by Johnson and operates out of the office at 8800 North Gainey Center Drive. From approximately June 2010 to June 2011, units of IPE were sold by MUC in a private placement offering. Fourteen of the fifteen investors in IPE – 93% – were TPGS advisory clients.

8. Eagle Creek Fund, LLC ("Eagle Creek Fund") was founded by Johnson to acquire Series A Preferred Stock in another company located in India. Eagle Creek Fund's managing member is Eagle Creek Management, LLC ("Eagle Creek Management"), which is owned by another entity, Strategic Global Partners, LLC, which is in turn co-owned and co-controlled by Johnson and one other individual. Eagle Creek Management operates out of the office at 8800 North Gainey Center Drive. From approximately July 2008 to January 2010, units of Eagle Creek Fund were sold by MUC in a private placement offering. All 97 investors in Eagle Creek Fund – 100% – were TPGS advisory clients.

9. The "Guaranteed Income Strategy" or "GIS3 Programs" were created by Johnson, and employed an insurance arbitrage strategy involving the purchase of a single premium immediate annuity ("SPIA") and a life insurance policy. The GIS3 Programs were securitized so that investors (besides the insured) could purchase units in an LLC pooled investment vehicle holding the SPIA and life insurance policy. At least twelve of the GIS3 Programs were in turn structured so that the LLC did not purchase the SPIA and life insurance policy directly, but purchased 100% ownership in a family limited liability limited partnership (LLLP) that held the SPIA and life insurance policy. The GIS3-LLLP Programs had as their managing member either Oak Canyon or Meridian Services, LLC ("Meridian Services"), another entity owned solely by Johnson that operates out of the office at 8800 North Gainey Center Drive. At least 118 of the 123 investors in the GIS3-LLLP Programs – 96% – were TPGS advisory clients.

10. The Investor A Trust dated January 6, 2009 (the "Investor A Trust") was a family trust for a TPGS client. Johnson served as trustee of the Investor A Trust until at least April 4, 2011. The Investor A Trust invested in Eagle Creek Fund and other pooled investment vehicles as well as publicly-traded securities.

Background

11. TPGS had custody over funds and securities of its advisory clients, IPE, Eagle Creek Fund, and the GIS3-LLLP Programs.

12. Paper stock certificates for some securities purchased by IPE were kept in a lockbox, which was in turn kept for a time in a locked file cabinet set aside for IPE at the office at 8800 North Gainey Center Drive. In or around August 2012, Johnson moved the lockbox to his personal residence. Johnson is the only person with a key to the lockbox.

13. The stock certificates Eagle Creek Fund received for its investments in an Indian company were kept in a locked storage facility in Scottsdale, Arizona where office documents for TPGS were stored. Johnson is the only person with a key to the storage facility.

14. The funds raised in each GIS3-LLLP Program were held in an account specific to each Program at a bank. Johnson, in his capacity as owner and manager of Oak Canyon or Meridian Services, had authority to obtain possession of the funds in each such account. These funds were used to acquire the ownership interest of family partnership LLLPs that held SPIAs and life insurance policies.

15. The Investor A Trust held funds and securities in a brokerage account at a third party registered broker-dealer. The Investor A Trust was an advisory client of TPGS. Johnson, in his capacity as trustee for the Investor A Trust, had authority to obtain possession of the money and securities in the brokerage account.

16. As the engagement partner and accounting firm retained to perform TPGS's surprise examinations in 2010-2012, Stark and StarkSchenkein caused TPGS's violations of the Custody Rule. Stark and StarkSchenkein knew or should have known that their conduct would contribute to TPGS's violations of the Custody Rule.

Respondent Stark Failed to Complete the 2010, 2011 and 2012 Surprise Examinations in Accordance with Applicable Standards

17. Stark's conduct of TPGS's 2010-2012 surprise examinations violated the professional standards for certified public accountants set forth in AICPA's Attestation Standards Section 101 and Compliance Attest Procedures Section 601.

18. Prior to the 2010 surprise examination it performed for TPGS, StarkSchenkein had never performed a surprise examination for a registered investment adviser.

19. The engagement team assigned to the 2010 surprise examination had no prior experience performing surprise examinations for registered investment advisers, including Stark, who served as engagement partner for all three surprise examinations and was responsible for supervising the work performed in connection with those engagements.

20. Although the engagement letter for the 2010 surprise examination was dated December 30, 2010, StarkSchenkein was not actually retained to perform that examination until 2011, and work on that surprise examination was performed in 2011 rather than 2010.

21. For both the 2010 and 2011 surprise examinations, StarkSchenkein filed a Form ADV-E and Report of Independent Registered Accountant certifying that TPGS was in compliance with paragraph (a)(4) of the Custody Rule when in fact it was not. The Form ADV-E for the 2011 surprise examination was filed more than 120 days after the commencement of that surprise examination.

22. For the 2012 surprise examination, StarkSchenkein did not complete its work and never filed any report or other document relating to that examination; nor did it file a Form ADV-E within four business days after termination of work on that surprise examination.

23. Stark deferred to TPGS's determinations as to what securities it had custody over and requested documents and information from TPGS in accordance with those determinations. Neither Stark nor anyone from StarkSchenkein inspected the paper stock certificates for the securities held by IPE or Eagle Creek Fund.

24. StarkSchenkein's engagement letters for the 2010, 2011 and 2012 surprise examinations, which were drafted by StarkSchenkein and reviewed and signed by Stark, lacked the required language concerning StarkSchenkein's obligation to file a Certificate on Form ADV-E within 120 days of the commencement of the surprise examination, to notify the Commission within one business day of any material discrepancies found during the surprise examination, and to file a Form ADV-E and statement within four business days after termination of work on the surprise examination. The engagement letters for the 2010 and 2011 surprise examinations also improperly disclosed the date that StarkSchenkein intended to commence the surprise examination, which the Custody Rule required to be chosen without prior notice or announcement to TPGS.

25. Stark allowed the 2010 surprise examination engagement letter to be dated December 30, 2010, and allowed a Form ADV-E to be filed that stated that the 2010 surprise examination commenced on December 31, 2010, even though StarkSchenkein was not actually retained to perform the examination until 2011 and performed the work on that examination in 2011 rather than 2010.

26. Although StarkSchenkein's written quality control procedures required engagement quality control review for attest engagements, Stark failed to obtain any engagement quality control review for the 2010 and 2011 surprise examinations.

27. Stark failed to obtain sufficient evidence to support the conclusion in the surprise examination reports for the 2010 and 2011 surprise examinations that TPGS was in compliance with the Custody Rule, because: (1) StarkSchenkein did not receive any documents from sources other than TPGS in connection with the 2010 and 2011 surprise examinations; (2) although the reports for the 2010 and 2011 surprise examinations state that confirmation procedures were performed, the working papers for these surprise examinations do not include any confirmations; (3) the working papers for the 2010 surprise examination indicate that no alternative procedures were performed in lieu of confirmations for IPE, Eagle Creek Fund, or three of the GIS3-LLLP Programs; (4) although the working papers for the 2010 surprise examination indicate that alternative procedures were performed for nine of the GIS3-LLLP Programs, the working papers show that these procedures relied exclusively upon bank statements provided by TPGS; and (5) while the working papers for the 2011 surprise examination indicate that alternative procedures were performed in lieu of confirmations for IPE, Eagle Creek Fund, and all of the GIS3-LLLP Programs, the working papers lack documents, such as updated account statements, that would have been required for the performance of alternative procedures.

28. Although Stark obtained a signed, written statement from TPGS entitled "Management Statement Regarding Compliance With Certain Provisions of the Investment Advisers Act of 1940" for both the 2010 and 2011 surprise examinations, these Management Statements lacked representations that TPGS had made available all documentation related to compliance with the Custody Rule.

29. Stark had no basis to opine that TPGS was in compliance with the Custody Rule in the surprise examination reports for the 2010 and 2011 surprise examinations because (1) he lacked the necessary knowledge and understanding of, and training and proficiency in, Custody Rule compliance requirements; and (2) he failed to obtain sufficient evidence to support that conclusion.

30. Stark failed to modify the surprise examination reports for the 2010 and 2011 surprise examinations, which state that confirmation procedures were performed even though the working papers for these surprise examinations do not include any confirmations, and the working papers for the 2010 surprise examinations further indicate that no alternative procedures were performed in lieu of obtaining confirmations for IPE, Eagle Creek Fund, and at least three of the GIS3-LLLP Programs. Stark also failed to modify the surprise examination reports for the 2010 and 2011 surprise examinations to reflect TPGS's noncompliance with the Custody Rule.

31. For the 2010, 2011 and 2012 surprise examinations, Stark violated AICPA Attestation Standards §§ 101.19-20 (practitioner must have adequate technical training and proficiency), §§ 101.21-22 (practitioner must have adequate knowledge of the subject matter), and Compliance Attest Procedure § 601.40 (practitioner should obtain an understanding of specified compliance requirements).

32. For the 2010, 2011 and 2012 surprise examinations, Stark violated Attestation Standards §§ 101.39-41 (practitioner must exercise due professional care in planning and performance, which requires critical review at every level of supervision and judgment, including preparation of report) and Compliance Attest Procedures §§ 601.38-39 (practitioner should exercise due care in planning, performing, and evaluating the results of his or her examination procedures and the proper degree of professional skepticism to achieve reasonable assurance that material noncompliance will be detected).

33. For the 2010, 2011 and 2012 surprise examinations, Stark violated Attestation Standards §§101.42-50 (practitioner must adequately plan the work and must properly supervise any assistants, and should establish an understanding with the client regarding the services to be performed for each engagement) and Compliance Attest Procedure §601.41 (planning an engagement).

34. For the 2010 and 2011 surprise examinations, Stark violated Attestation Standards §§101.51-58 (practitioner must obtain sufficient evidence to provide a reasonable basis for the conclusion expressed in the report) and Compliance Attest Procedures §§601.48-49 (practitioner should apply procedures to provide reasonable assurance of detecting material noncompliance).

35. For the 2010 and 2011 surprise examinations, Stark violated Attestation Standards §§101.59-62 and Compliance Attest Procedure §601.68 (practitioner should obtain from the client or other responsible party certain written representations regarding compliance, including representation that client has made available all documentation related to compliance with the specified requirements).

36. For the 2010 and 2011 surprise examinations, Stark violated Attestation Standards §§101.66-67 (practitioner should modify the report if there are material misstatements in the same), §§101.71-77 (practitioner must state significant reservations about the engagement, the subject matter, and, if applicable, the assertion related thereto in the report), and Compliance Attest Procedures §§601.63-67 (practitioner should modify the standard report when examination discloses material noncompliance or restriction on the scope of the engagement).

37. For the 2010 and 2011 surprise examinations, Stark violated Attestation Standards §§101.100-103 (practitioner should prepare and maintain adequate attest documentation).

38. For the 2012 surprise examination, Stark violated Attestation Standard §101.64 (practitioner should issue a report or withdraw from the attest engagement).

Respondent StarkSchenkein Failed to Complete the 2010, 2011 and 2012 Surprise Examinations in Accordance with Applicable Standards

39. StarkSchenkein's conduct of TPGS's 2010-2012 surprise examinations further violated the professional quality control standards set forth in AICPA Quality Control Standards Sections 10.27, 10.35-36, and 10.38-45 (formerly Sections 10.57, 10.60, 10.80-10.99).[4]

40. From approximately March 2011 to December 2012, StarkSchenkein had in place a quality control manual entitled "StarkSchenkein, LLP Quality Control Accounting and Auditing Policies and Procedures Manual" (the "Quality Control Manual").

41. Although StarkSchenkein's Quality Control Manual had a section entitled "Acceptance and Continuance of Clients and Specific Engagements," this section lacked a specific protocol for the firm to assess its competency and capacity for compliance in the context of a specific engagement.

42. The Quality Control Manual failed to include any discussion regarding who was responsible for determining that the firm was competent to perform an engagement, and capable of complying with the relevant legal and ethical requirements; nor did the Quality Control Manual include any discussion regarding how those determinations would be made.

43. StarkSchenkein accepted the engagements for TPGS's surprise examinations, even though StarkSchenkein lacked experience with surprise examinations for registered investment advisers and Stark lacked the knowledge or understanding of, or training and proficiency in, Custody Rule compliance requirements that would have enabled StarkSchenkein to competently perform the engagements and comply with the applicable legal requirements.

44. StarkSchenkein's Quality Control Manual included a subsection entitled "Engagement Quality Control Review" that provided that engagement quality control review, also described as "a concurring review by an independent partner," was required on attest engagements,

[4] The AICPA Quality Control Standards (SQCS 7) were revised effective January 1, 2012 (SQCS 8). The revision changed the numbering of some of the Standards.

and "must be completed before the report is released." This subsection failed to provide any mechanism for the assignment of engagement quality control reviewers with suitable experience.

45. The Quality Control Manual also failed to provide for any documentation or other mechanism to ensure that engagement quality control review was actually performed and completed for an attest engagement before the corresponding report was released.

46. StarkSchenkein failed to obtain engagement quality control review for the completed 2010 and 2011 surprise examinations at any time before or after the reports for those surprise examinations were issued.

Violations

47. As a result of the conduct described above, Stark and StarkSchenkein caused TPGS's violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder, which make it a fraudulent, deceptive or manipulative act for any registered investment adviser to have custody of clients' funds or securities unless the adviser: (1) maintains client funds and securities with a qualified custodian; (2) notifies clients of certain information regarding the qualified custodian and accounts; (3) has a reasonable basis, after due inquiry, for believing that a qualified custodian is providing at least quarterly account statements to clients; and (4) obtains an annual surprise examination.[5]

48. As a result of the conduct described above, Stark and StarkSchenkein engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 4C of the Exchange Act, Section 203(k) of the Advisers Act, and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, it is hereby ORDERED, effective immediately, that:

A. Respondent Stark cease and desist from committing or causing any violations and any future violations Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

B. Respondent StarkSchenkein cease and desist from committing or causing any violations and any future violations Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

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[5] Proof of scienter is not required to establish a violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder; a showing of negligence is adequate. *See SEC v. Steadman*, 967 F.2d 636, 647 (D.C. Cir. 1992).

C. Respondent Stark is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After three years from the date of this Order, Respondent Stark may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent Stark's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

    (a) Respondent Stark, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

    (b) Respondent Stark, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in his or the firm's quality control system that would indicate that he will not receive appropriate supervision;

    (c) Respondent Stark has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

    (d) Respondent Stark acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

E. The Commission will consider an application by Respondent Stark to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent Stark's

character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

F. Respondent StarkSchenkein is denied the privilege of appearing or practicing before the Commission as an accountant.

G. After one year from the date of this Order, Respondent StarkSchenkein may request that the Commission consider its reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent StarkSchenkein's work in its practice before the Commission will be reviewed either by the independent audit committee of the public company for which it works or in some other acceptable manner, as long as it practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

   (a) Respondent StarkSchenkein is registered with the Board in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective; however, if registration with the Board is dependent upon reinstatement by the Commission, the Commission will consider the application on its other merits;

   (b) Respondent StarkSchenkein has hired an independent CPA consultant ("consultant"), who is not unacceptable to the staff of the Commission and is affiliated with a public accounting firm registered with the Board, that has conducted a review of StarkSchenkein's quality control system and submitted to the staff of the Commission a report that describes the review conducted and procedures performed, and represents that the review did not identify any criticisms of or potential defects in the firm's quality control system. StarkSchenkein agrees to require the consultant, if and when retained, to enter into an agreement that provides that for the period of review and for a period of two years from completion of the review, the consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with StarkSchenkein, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the consultant in performance of his/her duties under this Order shall

not, without prior written consent of the staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with StarkSchenkein, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the review and for a period of two years after the review;

(c) Respondent StarkSchenkein has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent StarkSchenkein acknowledges its responsibility, as long as it appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

H. The Commission will consider an application by Respondent StarkSchenkein to resume appearing or practicing before the Commission provided that its state CPA license is current and it has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent StarkSchenkein's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

I. Respondent Stark shall pay a civil money penalty in the amount of $15,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (1) $3,000 within 10 days of entry of the Order; (2) $3,000 within 90 days of entry of the Order; (3) $3,000 within 180 days of entry of the Order; (4) $3,000 within 270 days of entry of the Order; and (5) $3,000 within 360 days of entry of the Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties. plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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

(3) Respondent 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 Stark as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Victoria Levin, Assistant Regional Director, Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower St., Suite 900, Los Angeles, CA 90071.

J. Respondent StarkSchenkein shall pay disgorgement of $12,750, which represents profits gained as a result of the conduct described herein, prejudgment interest of $1,353 and civil penalties of $15,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: (1) $5,820.60 within 10 days of entry of the Order; (2) $5,820.60 within 90 days of entry of the Order; (3) $5,820.60 within 180 days of entry of the Order; (4) $5,820.60 within 270 days of entry of the Order; and (5) $5,820.60 within 360 days of entry of the Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent 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

(3) Respondent 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 StarkSchenkein as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Victoria Levin, Assistant Regional Director, Enforcement, Securities and Exchange Commission, Los Angeles Regional Office, 444 South Flower St., Suite 900, Los Angeles, CA 90071.

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 are true and admitted by Respondent Stark, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent Stark 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 Respondent Stark 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

In the Matter of Reid S. Johnson
Administrative Proceeding File No. 3-16730

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached:

RESPONDENT REID S. JOHNSON'S ANSWER TO ALLEGATIONS SET FORTH IN THE ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, SECTIONS 203(f) AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940, AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940

was served on September 8, 2015, upon the following parties as follows:

By Facsimile and Overnight Mail
Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 1090
Washington, D.C. 20549-1090
Facsimile: (703) 813-9793
(Original and three copies)

By Email
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, D.C. 20549-2557
alj@sec.gov

By Email and U.S. Postal Service
Amy Jane Longo, Esq.
Securities and Exchange Commission
Los Angeles Regional Office
444 South Flower Street, Suite 900
Los Angeles, California 90071
LongoA@sec.gov
Counsel for Division of Enforcement

Marisa G. Westervelt, Esq.
Securities and Exchange Commission
Los Angeles Regional Office
444 South Flower Street, Suite 900
Los Angeles, California 90071
WesterveltM@sec.gov
Counsel for Division of Enforcement

Dated: September 8, 2015

Christana Eckert

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