

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84807 / December 12, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 5072 / December 12, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18926

In the Matter of

Landaas & Company and
Robert W. Landaas,

Respondents.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 203(e), 203(f), AND 203(k) OF THE INVESTMENT ADVISERS ACT OF 1940 AND SECTIONS 15(b)(4) AND 15(b)(6) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) and Sections 15(b)(4) and 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) against Landaas & Company (“L&C”) and Robert W. Landaas (“Landaas”) (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 Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 and Sections 15(b)(4) and 15(b)(6) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

Summary

1. From 1999 through March 2017, registered investment adviser and broker-dealer L&C and its Chairman and sole owner – Landaas – received undisclosed financial compensation by having an unaffiliated clearing broker (the “Clearing Broker”) charge L&C advisory clients a \$20 mark-up included in the Clearing Broker’s “confirmation fee.” While L&C used a portion of the mark-up to defray Clearing Broker’s clearing and execution charges for advisory client trades, in some instances L&C kept the remainder for itself, as compensation for acting as the introducing broker. L&C did not inform advisory clients that it received any compensation for acting as introducing broker for client trades or that this compensation created a conflict of interest. To the contrary, certain L&C representatives misunderstood the confirmation fee and as a result incorrectly told clients that the firm did not receive any portion of the confirmation fee. The marked-up confirmation fee also caused L&C to breach its fiduciary duty to seek best execution for its advisory clients.

2. In addition, the Clearing Broker shared with L&C revenues that the Clearing Broker received from mutual funds in the Clearing Broker’s no-transaction-fee (“NTF”) mutual fund program. The receipt of these undisclosed payments created a financial incentive for L&C to favor NTF funds over other investments and created yet another conflict of interest which L&C did not disclose. L&C also failed to adopt and implement written policies and procedures reasonably designed to meet its best execution obligations. As a result, L&C and Landaas violated or caused violations of Sections 206(2), 206(4), and 207 of the Advisers Act and Rule 206(4)-7 thereunder.

Respondents

3. L&C is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. L&C has been registered with the Commission as an investment adviser since 1993 and as a broker-dealer since 1999. As of December 31, 2017, L&C reported over \$966 million of regulatory assets under management.

4. Landaas, age 66, is a resident of River Hills, Wisconsin. He is the founder and sole owner of L&C and currently serves as its Chairman and Chief Executive Officer. He is an investment adviser representative and a registered representative of L&C and holds Series 7, 24, and 64 licenses.

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

Undisclosed Brokerage Compensation Paid by L&C Advisory Clients

5. Landaas started L&C in 1989 to provide investment advice and financial planning to individuals. Pursuant to Investment Advisory Agreements (“IAA”), L&C charged advisory clients a management fee based on a percentage of a client’s assets under management. The IAA also required advisory clients to pay all transaction expenses, such as brokerage fees.

6. Since 1999, L&C has used the Clearing Broker – an unaffiliated broker-dealer – as its preferred clearing broker and custodian for advisory clients. L&C disclosed that it would use the Clearing Broker, but did not mention that L&C would act as introducing broker or would receive compensation for certain brokerage transactions effected on behalf of advisory clients.

7. L&C negotiated and Landaas approved a Fully Disclosed Clearing Agreement (“FDCA”) with the Clearing Broker in 1999, which was amended four times, most recently in 2015. The FDCA, among other things, sets forth the amounts L&C pays the Clearing Broker for providing execution, clearing, and custody for L&C’s clients. Under the FDCA, the Clearing Broker allowed L&C to add a “customized mark-up” to certain fees the Clearing Broker charged L&C clients. As a result, the amount the Clearing Broker charged L&C clients was not based solely on the Clearing Broker’s actual execution and clearing fees for the particular transaction. The FDCA required L&C to notify clients about mark-ups.

8. In 1999, L&C added a “customized mark-up” of \$20 to the Clearing Broker’s “confirmation fee,” which compensated Clearing Broker for processing and handling trade confirmations.

9. Trade confirmations sent to L&C clients reported the \$22.00 confirmation fee for each trade (or \$22.75 if the client requested a paper trade confirmation) as a “Service Charge”. What L&C clients were not told was that the Clearing Broker took only \$1.50 to \$2.75 of that charge for trade confirmation. Rather, the Clearing Broker – after deducting its clearing and execution charges – credited the remainder (*i.e.*, the mark-up) to L&C’s account with the Clearing Broker.

10. L&C used a portion of the mark-ups to pay the execution and clearing fees the Clearing Broker charged for clients’ transactions. These charges varied and ranged from \$4.50 to \$35 depending on the type of trade. The Clearing Broker’s execution and clearing charges for the majority of client transactions were less than L&C’s \$20 mark-up and L&C received from \$3 to \$20 on these trades. This excess, if any, varied by transaction and the amount was tied to the Clearing Broker’s execution and clearing charges. In those instances where the Clearing Broker’s execution and clearing charges exceeded \$20, L&C did not receive any of the confirmation fee, but had to pay Clearing Broker to cover the difference.

11. For example, on January 2, 2014, L&C purchased shares of a certain mutual fund for a client and the client paid a \$22 “confirmation fee.” The Clearing Broker’s execution and clearing charges for this trade were \$7 and its trade confirmation fee was \$2, which the Clearing Broker deducted from the \$22 “confirmation fee.” As a result, of the \$22 the L&C client paid the Clearing

Broker as a “confirmation fee,” only \$9 was paid to the Clearing Broker for the transaction and L&C kept the \$13 excess.

12. Overall, from August 2012 to March 2017, L&C kept \$328,189 in excess confirmation fees.²

13. L&C’s decision to increase Clearing Broker’s confirmation fee by \$20 created conflicts of interest. First, by receiving compensation from client transactions, L&C had an incentive to enter into more transactions for clients. Second, it created an incentive for L&C to use the Clearing Broker because it allowed the application of the mark-up. Third, it created an incentive for L&C to select transactions that would have lower execution and clearing costs because there would be a greater excess leftover, which L&C directly benefited from.

L&C’s Disclosure Failures Related to the Confirmation Fee

14. L&C did not disclose in its Form ADV Part 2A (“Brochure”) that it was acting as introducing broker for clients, it received transaction-based compensation, or the associated conflicts of interest.

15. Advisory clients received L&C’s Brochures. L&C’s Brochures – as well as the adviser’s Forms ADV Part I and former Part II – were reviewed and approved by Landaas and except for changes to the firm’s assets under management, these disclosures were identical from 2004 through 2017.

16. In particular, the Forms ADV explained that clients would pay “transaction costs charged by its clearing firm, [the Clearing Broker].” Consistent with this disclosure, the Clearing Broker’s trading confirmations did not indicate that any portion of the confirmation fee would be paid to L&C.

17. L&C’s Brochure also did not disclose that the firm received a portion of the confirmation fee or any other transaction based compensation. Item 5 of the Brochure requires advisers to disclose if clients will incur brokerage and other transaction costs. In response to Item 5, L&C stated only that its advisory fee “does not include transaction costs charged by its clearing firm, [the Clearing Broker].”

18. Item 12.A of the Brochure requires advisers that “routinely recommend, request or require” clients to execute transactions through a specified broker-dealer, to describe the factors that the adviser considers in recommending a broker-dealer for client transactions, to describe “any economic relationship” with the broker-dealer “that creates a material conflict of interest,” and to

² The applicable limitations period under 28 U.S.C. § 2462 for disgorgement in this matter runs from August 1, 2012 forward.

discuss that conflict of interest.³ In response to Item 12.A, L&C disclosed that the firm is both an “investment adviser and securities broker dealer” and when the firm buys or sells securities it will do so “through its clearing firm, [Clearing Broker],” L&C’s disclosure acknowledges that favoring Clearing Broker for clearing and executing client trades has “consequences.” These include L&C “not exercising discretion in selecting a [broker] on a trade-by-trade basis” and the firm obtaining free research and software from Broker. The disclosure also states that receiving these “services at minimal or no cost . . . creates an inducement and conflict of interest for [L&C]” as using a different broker “may result in higher reporting and overhead costs” to the firm. L&C’s Brochure did not identify any other conflicts of interest from using the Clearing Broker to execute and clear client trades. L&C never disclosed that selecting the Clearing Broker allowed L&C to mark-up brokerage fees or that the Service Charge was not based on the Clearing Broker’s actual execution and clearing fees for the particular transaction. L&C also did not disclose, either in the IAA – which all advisory clients must sign – or elsewhere that L&C would receive brokerage fees on client trades or that a Clearing Broker fee would be increased.

19. In some instances, L&C investment adviser representatives, apparently not understanding the “confirmation fee” themselves, provided inaccurate information to clients about this fee. For example, on July 7, 2014, a representative told a client that L&C “do[es] not charge any transactional fees, but [the Clearing Broker] does incur a \$22.00 ticket charge for each sell and each buy. (Landaas and Company does not receive any of these ticket charges.)”

20. In its March 2017 Brochure, L&C provided some additional disclosure that it was acting as introducing broker for clients, received transaction-based compensation, and marked-up the Clearing Broker’s confirmation fee.

L&C’s Failure to Provide Best Execution and Inadequate Compliance Program

21. From 2012 to December 2017, L&C did not fulfill its obligation to provide best execution. In its Forms ADV, L&C included the following discussion of the firm’s best execution policies: “[L&C] uses [the Clearing Broker] as [L&C] believes that [the Clearing Broker] provides good client account summaries and competitive execution services. The execution and service charges imposed by [the Clearing Broker] and [L&C] may be higher or lower than obtainable from other broker-dealers.”

22. L&C, however, did not formally consider or evaluate the services provided by the Clearing Broker or itself as introducing broker. L&C’s policies and procedures did not include any factors it considered when selecting a broker for its clients or how it obtained the most favorable terms that were reasonably available under the circumstances. As a result, L&C did not evaluate Clearing Broker’s and its own costs and services before selecting them to handle client trades. L&C, instead, had advisory clients pay \$22 to buy and sell securities irrespective of the actual transaction costs for those trades. This amount was usually more than the Clearing Broker’s actual

³ L&C should have also disclosed the mark-ups in response to Item 13.A of now retired Form ADV, Part II and Item 14.A of the current Brochure. See *infra* at ¶ 24.

charges and the \$22 confirmation fee had no correlation to the brokerage services L&C provided for the client.

23. L&C had no policies and procedures that summarized the factors it considered when choosing a broker and evaluating best execution. The lack of policies and procedures prevented L&C from confirming that the disclosures made to clients in its Form ADV accurately described the adviser's trading activities and process for selecting a broker.

L&C's Undisclosed Revenue Sharing

24. Item 13.A of former Form ADV, Part II and Item 14.A of the current Brochure require advisers to disclose compensation received from third parties in connection with providing investment advisory services to clients. L&C participated in the Clearing Broker's revenue sharing program since 2002. As part of this program, the Clearing Broker waived transaction fees that L&C and the Clearing Broker would otherwise charge clients for the purchase of NTF mutual funds. In return, L&C received a percentage of revenues totaling \$80,294.10 that the Clearing Broker obtained from NTF mutual funds.

25. These payments provided a financial incentive for L&C to favor NTF mutual funds over other investments when giving investment advice to its advisory clients, and thus created a conflict of interest. L&C, however, did not disclose in its Forms ADV (or otherwise) until March 2017 that it received payments from the Clearing Broker based on L&C client assets invested in the NTF funds.

VIOLATIONS OF THE LAW

26. Section 206(2) of the Advisers Act makes it unlawful for any investment adviser to use any means or instrumentality of interstate commerce to engage in any transaction, practice, or course of business that operates as a fraud or deceit upon any client or prospective client. Scierter is not required to establish a violation of Section 206(2), but rather such violation may be based on a finding of negligence. *SEC v. Steadman*, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194-95 (1963)). As a result of the conduct described above, L&C and Landaas willfully⁴ violated Section 206(2).

27. Section 206(4) of the Advisers Act makes it "unlawful for any investment adviser ... to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative." Rule 206(4)-7 under the Advisers Act requires registered investment advisers to, among other things, "adopt and implement written policies and procedures reasonably designed to prevent violation" of the Advisers Act and the rules thereunder. As a result of the conduct described

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

above, L&C willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder and Landaas caused these violations by L&C.

28. Section 207 of the Advisers Act makes it “unlawful for any person willfully to ... omit to state ... material fact[s]” in registration applications and reports filed with the Commission. As a result of the conduct described above, L&C willfully violated Section 207 of the Advisers Act and Landaas caused these violations by L&C.

UNDERTAKINGS

L&C has undertaken to:

29. Independent Compliance Consultant. With respect to the retention of an independent compliance consultant, L&C has agreed to the following undertakings:

a. L&C shall retain, within ninety (90) days of the entry of this Order, the services of an independent compliance consultant (the “Independent Consultant”) that is not unacceptable to the Commission staff. The Independent Consultant’s compensation and expenses shall be borne exclusively by L&C.

b. L&C shall provide to the Commission staff, within ninety (90) days of the entry of this Order, a copy of the engagement letter detailing the Independent Consultant’s responsibilities, which shall include comprehensive compliance reviews as described below in this Order. L&C shall require that the Independent Consultant conduct by the end of the first quarter 2019 and again at the end of the first quarter of 2020 a comprehensive review of L&C’s supervisory, compliance, and other policies and procedures reasonably designed to prevent violations of the federal securities laws by L&C and its employees.

c. L&C shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and detailed report of its findings to L&C and to the Commission staff (the “Report”). L&C shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant’s recommendations for changes in or improvements to L&C’s policies and procedures and/or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to L&C’s policies and procedures and/or disclosures.

d. L&C shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, L&C shall in writing advise the Independent Consultant and the Commission staff of any recommendations that L&C considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that L&C considers unduly burdensome, impractical or inappropriate, L&C need not

adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

e. As to any recommendation with respect to L&C's policies and procedures on which L&C and the Independent Consultant do not agree, L&C and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by L&C and the Independent Consultant, L&C shall require that the Independent Consultant inform L&C and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that L&C considers to be unduly burdensome, impractical, or inappropriate. L&C shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between L&C and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, L&C shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

f. Within ninety (90) days of L&C's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, L&C shall certify in writing to the Independent Consultant and the Commission staff that L&C has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL, 60604, or such other address as the Commission staff may provide.

g. L&C shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of its files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

h. To ensure the independence of the Independent Consultant, L&C:

- (1) Shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and
- (2) Shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

i. L&C shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with

L&C, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with L&C, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

30. Recordkeeping. L&C shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of L&C's compliance with the undertakings set forth in this Order.

31. Compliance Training. Within one year of entry of this Order, L&C shall require its Chief Compliance Officer to complete thirty (30) hours of compliance training relating to the Advisers Act and the rules thereunder.

32. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

33. Certifications of Compliance by Respondent. L&C shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and L&C agrees to provide such evidence. The certification and supporting material shall be submitted to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL, 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, 100 F Street, NE Washington, DC 20549, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

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

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

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

B. Respondents are censured.

C. L&C shall comply with the undertakings enumerated in Section III, above.

D. Respondents shall pay disgorgement, prejudgment interest, and a civil penalty as follows:

(i) Respondents shall jointly and severally pay disgorgement of \$408,483.06; prejudgment interest of \$60,458.14; and a \$130,000 civil penalty, for a total of \$598,941.20 consistent with the provisions of this Subsection D;

(ii) Within ten (10) days of the entry of this Order, Respondents shall jointly and severally pay \$80,294.10 in disgorgement and \$11,001.53 in prejudgment interest 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). If timely payment of disgorgement is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 [17 C.F.R. § 201.600]. Payment must be made in one of the following ways:

1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondents 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. Respondents 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 Landaas & Company and Robert W. Landaas as Respondents 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 Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL, 60604.

- (iii) Within ten (10) days of the entry of this Order, Respondents shall jointly and severally deposit \$328,188.96 in disgorgement, \$49,456.61 in prejudgment interest, and the \$130,000 civil penalty, for a total of \$507,645.57 (the “Fair Fund”) into an escrow account at a financial institution not unacceptable to the Commission staff and shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely payment of the civil penalty or disgorgement is not made, additional interest shall accrue pursuant to either SEC Rule of Practice 600 [17 C.F.R. § 201.600] or 31 U.S.C. §3717.
- (iv) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the distribution of the disgorgement, civil penalties, prejudgment interest, and other monies paid by Respondents pursuant to this Order to Affected Clients, as that term is defined below in Paragraph (vi) of this Subsection D. This Fair Fund includes Respondents’ disgorgement of confirmation fee mark-ups, penalty, and prejudgment interest. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents’ payment of a civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.
- (v) L&C shall be responsible for administering the Fair Fund and may hire a professional to assist it in the administration of the distribution. The costs and expenses of administering the Fair Fund, including any such professional services, shall be borne by L&C and shall not be paid out of the Fair Fund.
- (vi) L&C shall pay from the Fair Fund to each current or former advisory client who paid a marked-up confirmation fee (“Affected Clients”) during the time period

August 1, 2012 through March 31, 2017 (the “Relevant Period”) the difference between the confirmation fee mark-up and what L&C paid the Clearing Broker for clearing and executing the trade pursuant to a disbursement calculation (the “Calculation”) that will be submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection D. No portion of the Fair Fund shall be paid to any Affected Clients in which Respondents or any of its current or former officers, directors, IARs, or registered representatives has a financial interest.

- (vii) L&C shall, within thirty (30) days of the entry of this Order, submit a proposed Calculation to the Commission staff for review and approval by the Commission staff. At or around the time of submission of the proposed Calculation to the staff, L&C, along with any third-parties or professionals retained by L&C to assist in formulating the methodology for its Calculation and/or administration of the Distribution, will make themselves available for a conference call with the Commission staff to explain the methodology used in preparing the proposed Calculation and its implementation, and to provide the staff with an opportunity to ask questions. L&C shall also provide to the Commission staff such additional information and supporting documentation as the Commission staff may reasonably request for the purpose of its review. In the event of one or more objections by the Commission staff to L&C’s proposed Calculation or any of its information or supporting documentation, L&C shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within ten (10) days of the date that L&C is notified of the objection. The revised Calculation shall be subject to all of the provisions of this Subsection D.
- (viii) After the Calculation has been approved by the Commission staff, L&C shall submit a payment file (the “Payment File”) for review and acceptance by the Commission staff demonstrating the application of the methodology to each Affected Client. The Payment File should identify, at a minimum: (1) the name of each Affected Client, and (2) the exact amount of the payment to be made from the Fair Fund to each affected investor; and (3) the amount of any *de minimis* threshold to be applied.
- (ix) L&C shall complete the disbursement of all amounts payable to Affected Clients within ninety (90) days of the date of receipt of the Commission staff approval of the Payment File, unless such time period is extended as provided in Paragraph (xiii) of this Subsection D.
- (x) If L&C is unable to distribute or return any portion of the Fair Fund for any reason, including an inability to locate an affected investor or a beneficial owner of an affected investor account or any factors beyond L&C’s control, L&C shall transfer any such undistributed funds to the Commission for eventual transmittal to the

United States Treasury in accordance with Section 21F(g)(3) of the Exchange Act, pursuant to instructions set forth in this Subsection D (ii) above, when the distribution is complete and before the final accounting provided for in Paragraph (xii) of this Subsection D is submitted to Commission staff.

- (xi) A Fair Fund is a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code (“IRC”), 26 U.S.C. §§ 1.468B.1-1.468B.5. L&C shall be responsible for any and all tax compliance responsibilities associated with the Fair Fund, including but not limited to tax obligations resulting from the Fair Fund’s status as a QSF and the Foreign Account Tax Compliance Act, and may retain any professional services necessary. The costs and expenses of tax compliance, including any such professional services, shall be borne by L&C and shall not be paid out of the Fair Fund
- (xii) Within one hundred fifty (150) days after L&C completes the distribution of the Fair Fund as described in Paragraph (ix) of this Subsection D, L&C shall return all undisbursed funds to the Commission pursuant to the instruction set forth in Paragraph (ii) of this Subsection D. L&C shall then submit to the Commission staff for its approval a final accounting and certification of the disposition of the Fair Fund for Commission approval, which shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (1) the amount paid to each Affected Client; (2) the date of each payment; (3) the total amount, if any, to be forwarded to the Commission for transfer to the United States Treasury; and (4) an affirmation that L&C has made payments from the Fair Fund to Affected Clients in accordance with the Calculation approved by the Commission staff. L&C shall submit the final accounting and certification together with proof and supporting documentation of such payment in a form acceptable to the Commission staff under a cover letter that identifies Landaas & Company as Respondent and the file number of these proceedings to Paul Montoya, Assistant Regional Director, Asset Management Unit, Chicago Regional Office, Securities and Exchange Commission, 175 W. Jackson Blvd., Suite 1450, Chicago, IL, 60604, or such other address the Commission staff may provide. L&C shall provide any supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.
- (xiii) The Commission staff may extend any of the procedural dates set forth in this Subsection D for good cause shown. Deadlines for dates relating to the Fair Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

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 Landaas, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Landaas 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 Landaas 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