

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CIVIL ACTION NO. 9:23-cv-81289

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

LUFKIN ADVISORS, LLC and
CHAUNCEY FORBUSH LUFKIN III,

Defendants.

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“Commission”) alleges the following against Defendants Lufkin Advisors, LLC (“Lufkin Advisors”) and Chauncey Forbush Lufkin III (“Chauncey Lufkin”):

SUMMARY OF THE ACTION

1. Defendants Lufkin Advisors, an investment adviser firm registered with the Commission, and Chauncey Lufkin, its principal, are engaged in an ongoing fraud on the private funds they manage and the investors in those funds. This fraud includes failing to disclose a loss of control of crypto assets entrusted to the adviser, multiple investments with Mr. Lufkin’s spouse’s company without proper disclosure to private-fund investors, failure to properly account for withdrawals from these funds, failure to monitor the value of the investments made by the funds, and a breach of their duty to manage the assets entrusted to them.

2. Lufkin Advisors also has not obeyed most of the statutes and rules applicable to

registered investment advisers. It has failed to make accurate disclosures to clients and the Commission and has failed to update those disclosures it has made to keep them from being misleading. It has failed to follow the rules concerning safeguarding client funds and securities in their possession or where they have the authority to obtain possession of them (the “custody rule”). It lacks required written policies and procedures or a code of ethics. It has failed to keep the required records of essential adviser activities such as records of the securities purchased and sold.

3. And, compounding these violations, Lufkin Advisors failed to produce its books and records to the Commission’s Division of Examinations staff (“Exam staff”) when requested, despite repeated attempts by the Exam staff to obtain these books and records and a statutory obligation to do so. By failing to produce those records, Lufkin Advisors obstructed the Exam staff’s efforts to conduct an examination of Lufkin Advisors pursuant to the Investment Advisers Act of 1940 (“Advisers Act”).

4. While there are only a handful of investors remaining in the private funds Defendants manage, those investors are at risk of losing their investments. The high risk of mismanagement and misappropriation of client or investor assets by Defendants necessitates expedited injunctive relief as detailed below to safeguard those assets and determine the disposition and amount of each client and investor’s investment funds.

5. By engaging in the conduct described in the Complaint, Lufkin Advisors has violated and continues to violate Advisers Act Sections 206(1), (2) and (4); 204(a); 204A; and 207; and Rules 204-2(a); 204A-1; 206(4)-2; 206(4)-7; and 206(4)-8 thereunder.

6. Defendant Chauncey Lufkin, as the principal, President, and Chief Compliance Officer (“CCO”) of Lufkin Advisors, has violated and continues to violate Advisers Act Sections

206(1), (2), and (4) and 207, and Rule 206(4)-8 thereunder, and aided and abetted Lufkin Advisors' violations of Advisers Act Sections 204(a) and 204A, and Rules 204-2(a); 204A-1; 206(4)-2; and 206(4)-7 thereunder.

7. Based on these violations, the Commission seeks:
 - a. Entry of an appropriate preliminary injunction order:
 - i. imposing an asset freeze of all assets under management by Lufkin Advisors;
 - ii. directing Lufkin Advisors and Chauncey Lufkin to preserve any records related to the subject matter of the lawsuit that are in their possession, custody, or subject to their control;
 - iii. requiring them to produce discovery to the Commission on an expedited basis; and,
 - iv. ordering them to provide an accounting of all assets currently under management by Lufkin Advisors and all expenses charged to either Lufkin Advisors or the private funds it manages in the last 24 months.
 - b. Entry of permanent injunctions enjoining Lufkin Advisors from violating Sections 206(1), (2) and (4); 204(a); 204A, and 207 of the Advisers Act and Rules 204-2(a); 204A-1; 206(4)-2; 206(4)-7; and 206(4)-8 thereunder; and enjoining Chauncey Lufkin from violating Advisers Act Sections 206(1), (2), and (4); and 207, and Rule 206(4)-8 thereunder, and aiding and abetting Lufkin Advisors' violations of Advisers Act Sections 204(a) and 204A, and Rules 204-2(a); 204A-1; 206(4)-2; and 206(4)-7 thereunder;
 - c. Appropriate civil monetary penalties pursuant to Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)];
 - d. Disgorgement of Defendants' ill-gotten gains, pursuant to Sections 21(d)(5) and 21(d)(7) of the Securities Exchange Act of 1934, plus prejudgment interest; and,
 - e. award any other relief that the Court deems just and proper.

DEFENDANTS

8. **Lufkin Advisors, LLC** is an investment adviser with its principal place of business in Riviera Beach, Florida. Lufkin Advisors has been registered with Commission since 2012.

9. Lufkin Advisors is engaged in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. It receives compensation for these services.

10. Through the Commission's Form ADV, registered investment advisers are required to provide information about their business, including contact information. Forms ADV must be kept updated by filing periodic amendments.

11. On December 20, 2022, Lufkin Advisors filed with the Commission its annual updating amendment to Form ADV for the fiscal year ended December 31, 2021. In it, Lufkin Advisors states that it manages four accounts, including three pooled investment vehicles, and has more than \$115 million in regulatory assets under management.

12. In its Form ADV, Lufkin Advisors states that it stores books and records with CWS CPA LLP ("CWS"), a certified public accounting firm located in New York, New York.

13. Lufkin Advisors' annual updating amendment for its fiscal year ended December 31, 2022, was due by March 31, 2023, but has not yet been filed.

14. Lufkin Advisors manages three private funds: LA Capital Management, Ltd. ("LA Capital"), LA Floating Rate Fund, LP ("LA Floating Rate"), and Latitude CLO II, Ltd. ("Latitude II") (collectively, the "Private Funds").

15. The Private Funds are "pooled investment vehicles" as defined in Advisers Act Rule 206(4)-8(b).

16. Both LA Capital and LA Floating Rate have, along with investments from Chauncey Lufkin and his family, three outside investors: The Chauncey F. Lufkin III Foundation (“Foundation”) and two former employees of Lufkin Advisors. The Foundation is a charitable organization that purports to focus on fighting poverty and medical diseases.

17. LA Floating Rate accounts for the bulk of the assets managed by Lufkin Advisors, which are primarily held in private equity investments and crypto assets.

18. **Chauncey Forbush Lufkin III** resides in Riviera Beach, Florida. In the most recent annual updating amendment to Form ADV filed by Lufkin Advisors, he is listed as the President, CCO, and owner of 75% or more of Lufkin Advisors. Lufkin Advisors’ previous Form ADV also listed Chauncey Lufkin as its Chief Executive Officer.

19. Chauncey Lufkin is Lufkin Advisors’ only employee.

20. Chauncey Lufkin takes annual compensation of \$250,000 for his work at Lufkin Advisors.

21. Chauncey Lufkin is engaged in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. He receives compensation for these services.

JURISDICTION AND VENUE

22. The Court has jurisdiction over this action pursuant to Sections 209(d) and 214 of the Advisers Act, 15 U.S.C. §§ 80b-9(d) and 80b-14.

23. The Commission seeks preliminary and permanent injunctions pursuant to Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9(d).

24. The Commission seeks the imposition of civil penalties pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e).

25. The Court has personal jurisdiction over Defendants and venue is proper in this District because Defendants reside and transact business in this District, and many acts and omissions constituting the alleged violations occurred, in whole or in part, in this District.

26. Defendants directly or indirectly used the mails or the means or instruments of transportation or communication in interstate commerce in connection with their business as investment advisers and the conduct described in this Complaint.

27. Unless enjoined, Defendants will continue to engage in the securities law violations alleged here, or in similar conduct that would violate the federal securities laws.

DEFENDANTS' ONGOING FRAUDULENT COURSE OF CONDUCT

28. Defendants are engaged in an ongoing course of conduct that includes multiple breaches of their fiduciary duties to their clients (the Private Funds) and their responsibilities to investors in those Private Funds, as well as misleading misrepresentations and fraudulent omissions.

29. This fraud includes failing to disclose a loss of control of crypto assets entrusted to the adviser, multiple investments with Mr. Lufkin's spouse's company without proper disclosure to private-fund investors, failure to properly account for withdrawals from the Private Funds, failure to monitor the value of the investments made by the Private Funds, and a general derogation of their duty to manage the assets entrusted to them.

Failure to Manage Investment Assets Entrusted to Lufkin Advisors

30. Defendants are not managing the assets entrusted to them or otherwise providing adviser services to their clients or their investors.

31. Defendants have knowingly failed to monitor the value of the assets under management (contrary to the representations made in the firm's Form ADV Parts 2A, including

that they would “review[] the portfolio assets of each Fund on a daily, weekly, quarterly, and annual basis”).

32. Chauncey Lufkin has not had an accurate accounting of the value of the assets in the Private Funds, either individually or collectively, for one to two years. He has only a vague sense of the crypto assets he has bought for the Private Funds and does not know (and, in some cases, cannot get) the quantities and values of those assets.

33. Defendants do not communicate with the investors in the Private Funds, failing to provide investment updates of any kind. Investors in the Private Funds have resorted to working through CWS to try to get information about their investment funds and missing tax documents, and to try to get their investment funds returned (with limited success).

34. Defendants have thus knowingly failed to provide the promised investment advisory services in breach of their fiduciary duty and the anti-fraud provisions of the Advisers Act.

Loss of Control of Crypto Assets

35. Lufkin Advisors lost access to one of the three crypto wallets it uses to manage the Private Funds’ investments in crypto assets for more than a year. The value of this wallet was estimated by Chauncey Lufkin to be about \$10 million.

36. Lufkin Advisors and Chauncey Lufkin had no access to that wallet for between twelve and twenty-four months. They were unable to trade the assets in the wallet or even determine the amount and value of those assets.

37. Chauncey Lufkin claims to have lost or forgotten the passwords or keys necessary to access the wallet and the assets inside.

38. Because Defendants could not access this wallet, they could not complete a

current, accurate calculation of Lufkin Advisors' regulatory assets under management. In other words, Defendants could not determine the total value of the investments they are managing.

39. Defendants did not disclose their loss of control of these assets to clients or Private Fund investors for months, despite their statements in their Form ADV Part 2A that they would be reviewing the accounts regularly and trading when necessary.

Undisclosed Conflicts of Interest in Investments with Spouse's Company

40. An investment adviser is required to disclose all material facts that may bias its investment advice and provide sufficient facts so that a client or prospective client can evaluate any actual or potential conflict.

41. Chauncey Lufkin's wife works at a "blockchain venture capital fund of funds platform" ("venture capital fund"). Through Lufkin Advisors, Chauncey Lufkin invested assets of LA Floating Rate in a fund managed by the venture capital fund. An initial investment occurred while Chauncey Lufkin's wife was working part-time at the venture capital fund. Lufkin Advisors then made further investments after his wife began working there as a firm partner.

42. Defendants knowingly failed to disclose this potential conflict of interest to their clients and investors.

Failure to Properly Account for Withdrawals from the Private Funds

43. Defendants failed to properly account for expenses and other withdrawals from the Private Funds.

44. In May 2021, Foundation expenses were charged to LA Floating Rate disguised as expenses of Lufkin Advisors. In other words, Defendants used money from LA Floating Rate to pay for expenses incurred by the Foundation instead of Lufkin Advisors. These expenses

were incurred pursuant to a technology consulting agreement negotiated and signed by Chauncey Lufkin on Lufkin Advisors' behalf. Although the agreement stated that it was for services to Lufkin Advisors, the scope of services also included at least four tasks related to the Foundation's website.

45. In early May 2023, Defendants used money from LA Floating Rate for Chauncey Lufkin's personal expenses without reducing his own capital allocation (i.e., the amount he had invested in the fund). Chauncey Lufkin entered a \$50,000 per year personal consulting agreement with a friend and in May 2023 wired \$25,000 from LA Floating Rate to the friend, purportedly to make a partial payment on the consulting agreement between the two.

46. Chauncey Lufkin testified that this \$50,000 per-year personal consulting agreement is for his friend to conduct research (the nature and subject of which is still undefined) for LA Floating Rate. To date, the subject of this research has not been defined and the friend has not performed consulting services.

Failure to Monitor the Value of the Investments in the Private Funds

47. An essential responsibility of investment advisers is to be able to ascertain the existence and value of the assets they are managing, such that they can adequately provide investment advice regarding those assets. Defendants did not carry out that basic and essential responsibility and, as a result, failed to monitor the value of the investments in the Private Funds.

48. As of late August 2023, Defendants did not know the value of Lufkin Advisors' current regulatory assets under management—only that the \$115 million reported in Lufkin Advisors' Form ADV filed in December 2022 is incorrect and outdated by at least two years.

49. This inability to determine an accurate, current regulatory assets under management is due in part to the fact that Chauncey Lufkin lost access to one of Lufkin

Advisors' crypto wallets (the largest of three crypto wallets Chauncey Lufkin used for Lufkin Advisors).

DEFENDANTS' ADDITIONAL ADVISERS ACT VIOLATIONS

Failure to Custody Properly the Assets Under Management

50. Rule 206(4)-2 under the Advisers Act ("Custody Rule") requires registered investment advisers with custody of client assets to take certain steps to prevent loss, misuse, or misappropriation of those assets. An investment adviser has custody of client assets if it holds, directly or indirectly, client funds or securities, or if it can obtain possession of those assets.

51. Chauncey Lufkin controls Lufkin Advisors and related party Lufkin Associates, LLC, the general partner of each of the Private Funds, and has the authority to make decisions for, and act on behalf of, the Private Funds. The Private Funds are each pooled investment vehicles.

52. Lufkin Advisors has custody of client funds and securities.

53. When a registered investment adviser has custody of client funds or securities, the adviser must arrange for those assets to be verified through a surprise examination by an independent public accountant at least once per year.

54. The adviser must also notify the client in writing of accounts opened by the adviser at a qualified custodian on the client's behalf. And the adviser must have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each of the adviser's clients for which it maintains funds or securities. If, as here, the client is a limited partnership for which the adviser or a related person is a general partner, then the account statements must be sent to each limited partner or member.

55. An investment adviser to pooled investment vehicles, such as the Private Funds,

“is not required to comply with” the notification and account statement requirements and shall be deemed to have complied with the surprise examination requirement, with respect to a fund if the fund is subject to audit at least annually and the adviser “distributes [the fund’s] audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) . . . within 120 days of the end of [the fund’s] fiscal year.”

56. Lufkin Advisors did not comply with any of the above requirements. It did not obtain any examination (surprise or otherwise) by an independent public accountant. Nor were there any account statements or financial statements (audited or otherwise) sent to any client or Private Funds investors (who were limited partners in the Private Funds).

Misrepresentations and Omissions in Commission Reports

57. Section 207 of the Advisers Act prohibits any person from willfully making “any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203 or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.”

58. Lufkin Advisors’ current documentation on file with the Commission is outdated and contains multiple misstatements. Its annual updating amendment to Form ADV for 2022 is now five months late, and its most recent annual updating amendment on file was submitted nine months late.

59. Its most recent annual updating amendment to Form ADV also contains multiple misstatements. These misstatements include, but are not limited to, the description of the firm’s compensation arrangements (it was no longer charging certain types of fees), the description of the firm’s primary business (omitting entirely any references to private equity or crypto assets),

the accuracy of the gross asset value for Latitude II (carrying forward a value the firm could not confirm was accurate), and the custodians for the Private Funds (inaccurately listing at least three custodians that no longer custodied assets).

60. Similarly, Lufkin Advisors' Form ADV Parts 2A and 2B are more than six years old and include many inaccuracies and misstatements. These include, but are not limited to, the description of advisory services offered (describing a previous set of investment objectives that is no longer relevant), whether any of its employees had been subject to relevant legal or disciplinary action (at least one had), the frequency of periodic portfolio reviews (no longer occurring as frequently as stated), the existence of a compliance committee (it had not existed for at least one year), and the current list of employees (all except Chauncey Lufkin had left). The Form ADV Part 2A also incorrectly represents that fund investors will receive "regular written reviews" on a monthly or quarterly basis, as well as frequent "net worth statements (i.e., personal balance sheets and asset allocation summaries)."

61. For each of these misrepresentations in Lufkin Advisors' Form ADV, Defendants knew or recklessly disregarded that the information provided was or had become inaccurate and/or misleading, and knowingly signed and filed the reports anyway.

No Code of Ethics

62. Section 204A of the Advisers Act and Rule 204A-1 require registered investment advisers to adopt a code of ethics with certain minimum standards, including a standard of business conduct of supervised persons that reflects the adviser's fiduciary obligations and those of its supervised persons.

63. Lufkin Advisors does not have a written code of ethics and falsely claimed in Forms ADV that it did.

No Written Policies and Procedures

64. Section 206 of the Advisers Act and Rule 206(4)-7 require the adoption and implementation of policies and procedures designed to prevent violations of the Advisers Act and its Rules.

65. Lufkin Advisors does not keep and maintain a written set of policies and procedures designed to prevent violations of the Advisers Act.

66. Nor have Defendants reviewed any compliance program in at least a decade.

Failure to Keep Required Records

67. Section 204(a) of the Advisers Act requires registered investment advisers to make and keep records required by Commission rules.

68. Lufkin Advisors failed to make and keep documents, including but not limited to:

- Written agreements with clients or otherwise relating to the business of the adviser;
- Memoranda of each order given by the adviser for the purchase or sale of any security;
- For each client, records showing the securities purchased and sold and the date, amount, and price of each purchase and sale;
- Check books, bank statements, cancelled checks, and cash reconciliations;
- Partnership articles and amendments, articles of incorporation, charters, minute books, and stock certificate books for the registrant and any predecessor;
- Written agreements relating to the business of the adviser;
- Copies of each brochure and brochure supplement given to any client or prospective client;
- All written communications received or sent by the adviser relating to recommendations or advice; receipt, disbursement, or delivery of funds or securities; and the placing or execution of any order to purchase or sell any security;
- A separate ledger for each client showing all purchases, sales, receipts, and

deliveries of securities;

- A record of each security, showing the location of the security and the amount of each client's interest;
- Private Fund assets under management, trading and investment positions, valuation policies and practices, and trading practices;
- The investment adviser's code of ethics;
- The investment adviser's policies and procedures formulated pursuant to Rule 206(4)-7(a);

69. Defendants could not produce these documents either during the examination, described below, by the Exam staff, or the subsequent investigation by Commission staff.

Failure to Produce Records to Exam Staff for Commission Examination

70. The Commission's Exam staff conducts exams of registrants for the Commission's National Exam Program. These exams support the Commission's mission to "protect investors, ensure market integrity and support responsible capital formation through risk focused strategies."¹

71. Section 204(a) of the Advisers Act requires investment advisers registered with the Commission to provide the books and records they are required to keep "at any time, or from time to time, to such reasonable, periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 80b-4(a).

72. Since March 1, 2023, the Exam staff has attempted to obtain certain books and records from Lufkin Advisors that the adviser is required to produce under the Advisers Act.

¹ See "About the Division of Examinations," available at www.sec.gov/exams/about (last accessed on August 5, 2023).

Despite these efforts, Lufkin Advisors failed to produce the requested records. Most communication from the Exam staff to representatives of Lufkin Advisors, including to Chauncey Lufkin, went unanswered.

73. On February 28, 2023, an Exam staff member (“Examiner 1”) contacted Lufkin Advisors and left a voicemail requesting a call back. Later that day, Chauncey Lufkin returned Examiner 1’s call. Examiner 1 announced the start of the Commission’s examination of Lufkin Advisors. Chauncey Lufkin asked Examiner 1 to contact CWS about the examination.

74. A day later (March 1), Examiner 1 emailed Chauncey Lufkin and an individual at CWS. The email provided examination-related documents including the list of documents the Exam staff would require for the examination (“examination requests”). The deadline for Lufkin Advisors’ response was March 17, 2023.

75. The Exam staff tried to reach Chauncey Lufkin and CWS multiple times, but did not receive any response before the March 17, 2023 deadline.

76. On March 22, 2023, CWS sent to the Exam staff a single document responsive to Request No. 1 (organizational chart). In response to that email, the Exam staff clarified that it still expected responses to all other requests.

77. The Exam staff tried to reach Chauncey Lufkin and CWS staff multiple times after the initial production of a single document, with no response. On April 11, 2023, the Exam staff emailed Chauncey Lufkin and CWS a Failure to Produce Letter, notifying them that this failure violated Section 204(a) of the Advisers Act. The Exam staff also left a voicemail for Chauncey Lufkin notifying him of the Failure to Produce Letter and requesting a response.

78. Later that day, CWS produced a small set of documents responsive to Requests No. 2 (employee list), No. 3 (legal counsel and consultants list), No. 7.a (three fund

organizational documents), and a portion of No. 24 (Lufkin Advisors' bank statements for the prior 6 months).

79. On April 28, 2023, the Exam staff spoke with CWS about Lufkin Advisors. Despite being invited, Chauncey Lufkin did not join. The Exam staff again requested certain information about Lufkin Advisors, as well as responses to all outstanding Requests.

80. On May 4, 2023, CWS provided one tax document.

81. Between May 4 and August 2023, the Exam staff received no other productions and could not reach Chauncey Lufkin or CWS despite repeated attempts.

CLAIMS FOR RELIEF

COUNT 1

(BOTH DEFENDANTS)

Fraudulent Conduct by Investment Advisers In Violation of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)]

82. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 81 as if set forth fully here.

83. At all relevant times, Defendants were "investment advisers" within the meaning of Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)]. Defendants were in the business of providing investment advice concerning securities for compensation. Chauncey Lufkin was also an investment adviser due to his ownership, management, and control of Lufkin Advisors.

84. As detailed above, Defendants, through, among other things, their failure to provide investment advisory services or otherwise manage the assets entrusted to them, their deceptive statements and fraudulent omissions concerning their inability to manage a certain

portion of those assets due to their loss of access to a crypto asset wallet, their failures to disclose actual and potential conflicts of interest (including about investment in Chauncey Lufkin's spouse's company), and the failure to properly account for withdrawals from the Private Funds managed by Defendants, engaged in a scheme to defraud their clients, as well as transactions, practices, and courses of business which operated as a fraud or deceit upon their advisory clients.

85. Defendants, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, acting intentionally, knowingly or recklessly: (a) have employed or are employing devices, schemes, or artifices to defraud clients and/or potential clients; and/or (b) have engaged or are engaging in transactions, practices, and courses of business which operate as a fraud or deceit upon a client or prospective client.

86. By engaging in the conduct described above, Defendants have violated, and unless enjoined, will continue to violate Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. § 80b-6(1) and (2)].

COUNT 2

(BOTH DEFENDANTS)

Fraudulent Conduct by Investment Advisers to a Pooled Investment Vehicle In Violation of Section 206(4) of the Advisers Act and Rule 206(4)-8 Thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-8]

87. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 86, as if set forth fully here.

88. At all times relevant to this Complaint, Defendants acted as investment advisers to the Private Funds, pooled investment vehicles as defined in Advisers Act Rule 206(4)-8(b) [17 C.F.R. § 275.206(4)-8(b)].

89. Defendants, while acting as investment advisers to pooled investment vehicles, by

use of the mails, and the means and instrumentalities of interstate commerce, directly or indirectly, engaged in acts, practices, or courses of business which were fraudulent, deceptive, or manipulative. Defendants also made untrue statements of material facts and/or omitted to state a material fact necessary to make the statements made, in the light of the circumstances in which they were made, not misleading, to investors or prospective investors in the pooled investment vehicles, and otherwise engaged in acts, practices, or courses of business that were fraudulent, deceptive, or manipulative with respect to investors or prospective investors in the pooled investment vehicles.

90. By engaging in the conduct described above, Defendants have violated, and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. § 80b6(4)] and Rule 206(4)-8 thereunder [15 C.F.R. § 275.206(4)-8].

COUNT 3

(LUFKIN ADVISORS)

Failure to Comply with Asset Custody Requirements In Violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 Thereunder [15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-2]

91. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 90, as if set forth fully here.

92. At all times relevant to the Complaint, Lufkin Advisors was an investment adviser registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3].

93. At all times relevant to the Complaint, Lufkin Advisors had custody and control over the Private Funds' assets.

94. At no time have the Private Funds undergone a surprise annual examination by an independent accountant. Nor did Lufkin Advisors provide investors with audited financial

statements or seek to satisfy custody requirements using any alternate method.

95. By engaging in the conduct described above, Lufkin Advisors directly and indirectly violated, and, unless enjoined, will continue to violate Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.260(4)-2].

COUNT 4

(CHAUNCEY LUFKIN)_

**Aiding and Abetting Lufkin Advisors' Failure
to Comply with Asset Custody Requirements
[15 U.S.C. § 80b-9]**

96. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 95 above, as if set forth fully here.

97. At all times relevant to the Complaint, Lufkin Advisors was an investment adviser registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3].

98. At all times relevant to the Complaint, Lufkin Advisors had custody and control over the Private Funds' assets.

99. At no time have the Private Funds undergone a surprise annual examination by an independent accountant. Nor did Lufkin Advisors provide investors with audited financial statements or seek to satisfy custody requirements using any alternate method.

100. Chauncey Lufkin knew or recklessly disregarded that Lufkin Advisors' conduct was improper and knowingly rendered to Lufkin Advisors substantial assistance in this conduct.

101. As a result, Chauncey Lufkin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Lufkin Advisors' violation of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-2 thereunder [17 C.F.R. § 275.206(4)-2], and, unless enjoined, is reasonably likely to continue to do so. Thus, Chauncey Lufkin aided and abetted

Lufkin Advisors' violation, in violation of Section 209(f) of the Advisers Act.

COUNT 5

(LUFKIN ADVISORS)

**Failure to Create, Implement, and Review Adviser Policies and Procedures
In Violation of Section 206(4) of the Advisers Act and Rule 206(4)-7 Thereunder
[15 U.S.C. § 80b-6(4) and 17 C.F.R. § 275.206(4)-7]**

102. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 101 above, as if set forth fully here.

103. At all times relevant to the Complaint, Lufkin Advisors was an investment adviser registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3].

104. Lufkin Advisors failed to create, adopt, or implement a set of written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated thereunder by Lufkin Advisors and Lufkin Advisors' supervised persons. Nor did Lufkin Advisors engage in an annual review of any policies and procedures.

105. As a result, Lufkin Advisors violated, and, unless enjoined, will continue to violate, Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17 C.F.R. § 275.206(4)-7].

COUNT 6

(CHAUNCEY LUFKIN)_

**Aiding and Abetting Lufkin Advisors' Failure
to Comply with Adviser Policies and Procedures Requirements
[15 U.S.C. § 80b-9]**

106. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 105 above, as if set forth fully here.

107. At all times relevant to the Complaint, Lufkin Advisors was an investment adviser

registered under Section 203 of the Advisers Act [15 U.S.C. § 80b-3].

108. Lufkin Advisors failed to create, adopt, or implement a set of written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules promulgated under it by Lufkin Advisors and Lufkin Advisors' supervised persons. Nor did Lufkin Advisors engage in an annual review of any policies and procedures.

109. Chauncey Lufkin knew or recklessly disregarded that Lufkin Advisors' conduct was improper and knowingly rendered to Lufkin Advisors substantial assistance in this conduct.

110. As a result, Chauncey Lufkin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Lufkin Advisors' violation of Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-7 thereunder [17 C.F.R. § 275.206(4)-7], and, unless enjoined, is reasonably likely to continue to do so. Thus, Chauncey Lufkin aided and abetted Lufkin Advisors' violation, in violation of Section 209(f) of the Advisers Act.

COUNT 7

(LUFKIN ADVISORS)

Failure to Adopt an Adviser Code of Ethics In Violation of Section 204A of the Advisers Act and Rule 204A-1 Thereunder [15 U.S.C. § 80b-4A and 17 C.F.R. § 275.204A-1]

111. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 110 above, as if set forth fully here.

112. Section 204A of the Advisers Act and Rule 204A-1 thereunder require an investment adviser to adopt a code of ethics with certain minimum standards.

113. At all times relevant to this Complaint, Lufkin Advisors did not have a code of ethics.

114. As a result, Lufkin Advisors violated, and, unless enjoined, will continue to

violate, Section 204A of the Advisers Act [15 U.S.C. § 80b-4A] and Rule 204A-1 [17 C.F.R. § 275.204A-1].

COUNT 8

(CHAUNCEY LUFKIN)

**Aiding and Abetting Lufkin Advisors' Failure to Adopt an Adviser Code of Ethics
[15 U.S.C. § 80b-9]**

115. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 114 above, as if set forth fully here.

116. At all times relevant to this Complaint, Lufkin Advisors did not have a code of ethics as required by the Advisers Act and the Rules thereunder.

117. Chauncey Lufkin knew or recklessly disregarded that Lufkin Advisors' conduct was improper and knowingly rendered to Lufkin Advisors substantial assistance in this conduct.

118. As a result, Chauncey Lufkin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Lufkin Advisors' violation of Section 204A of the Advisers Act [15 U.S.C. § 80b-4A] and Rule 204A-1 thereunder [17 C.F.R. § 275.204A-1], and, unless enjoined, is reasonably likely to continue to do so. Thus, Chauncey Lufkin aided and abetted Lufkin Advisors' violation, in violation of Section 209(f) of the Advisers Act.

COUNT 9

(BOTH DEFENDANTS)

**Material Misstatements in Reports to the Commission
In Violation of Section 207 of the Advisers Act
[15 U.S.C. § 80b-4A and 17 C.F.R. § 275.204A-1]**

119. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 118 above, as if set forth fully here.

120. As detailed above, Defendants willfully made untrue statements of material fact in

Lufkin Advisors’ Forms ADV and Forms ADV Part II, filed with the Commission pursuant to Sections 203 and 204 of the Advisers Act [15 U.S.C. §§ 80b-3 and 80b-4]. Defendants also willfully omitted to state or report material facts required to be stated in those Forms.

121. These material misstatements and omissions included inaccuracies such as the number and identity of employees, whether the firm had custody or investment discretion over any client assets, the identity of investors in a private fund, the description of advisory services offered, and the existence of a code of ethics, written compliance program, or the practice of providing regular written reviews or net worth statements to fund investors.

122. Thus, Defendants willfully violated Section 207 of the Advisers Act [15 U.S.C. § 207].

COUNT 10

(LUFKIN ADVISORS)

**Failure to Keep Required Books and Records
In Violation of Section 204(a) of the Advisers Act and Rule 204-2(a) Thereunder
[15 U.S.C. § 80b-4 and 17 C.F.R. § 275.204-2(a)]**

123. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 122 above, as if set forth fully here.

124. Section 204(a) of the Advisers Act and certain rules promulgated under it require a registered investment adviser to make and keep true, accurate, and current books and records.

125. Defendants failed to make a keep true, accurate, and current records that are required by the Rules promulgated under the Advisers Act, including but not limited to:

Missing Documents	Rule Requiring
Written Agreements with clients or otherwise relating to the business of the adviser	Rule 204-2(a)(10)
Memoranda of each order given by the adviser for the purchase or sale of any security	Rule 204-2(a)(3)
For each client, records showing the securities purchased and sold	Rule 204-2(c)(1)

and the date, amount, and price of each purchase and sale	
Check books, bank statements, cancelled checks, and cash reconciliations	Rule 204-2(a)(4)
Partnership articles and amendments, articles of incorporation, charters, minute books, and stock certificate books for the registrant and any predecessor	Rule 204-2(e)(2)
Written agreements relating to the business of the adviser	Rule 204-2(a)(10)
Copies of each brochure and brochure supplement given to any client or prospective client	Rule 204-2(a)(14)
All written communications received or sent by the adviser relating to recommendations or advice; receipt, disbursement, or delivery of funds or securities; and the placing or execution of any order to purchase or sell any security	Rule 204-2(a)(7)
A separate ledger for each client showing all purchases, sales, receipts, and deliveries of securities	Rule 204-2(b)(2)
A record of each security, showing the location of the security and the amount of each client's interest	Rule 204-2(b)(4)
Private Fund assets under management, trading and investment positions, valuation policies and practices, and trading practices	Section 204(b)(3) and Dodd-Frank Act Section 404
The investment adviser's code of ethics	Rule 204-2(a)(12)
The investment adviser's policies and procedures formulated pursuant to Rule 206(4)-7(a)	Rule 204-2(a)(17)

126. As a result, Lufkin Advisors violated and, unless enjoined, will continue to violate Section 204 of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2(A) thereunder [17 C.F.R. § 275.204-2(a)].

COUNT 11

(CHAUNCEY LUFKIN)

Aiding and Abetting Lufkin Advisors' Failure to Keep Required Books and Records In Violation of Section 204(a) of the Advisers Act and Rule 204-2(a) Thereunder [15 U.S.C. § 80b-9]

127. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 126 above, as if set forth fully here.

128. As described above, Lufkin Advisors failed to keep and maintain required books

and records for an investment advisor in violation of Section 204(a) of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2(a) thereunder [17 C.F.R. § 275.204-2(a)].

129. Chauncey Lufkin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Lufkin Advisors' violation of Section 204(a) of the Advisers Act [15 U.S.C. § 80b-4] and Rule 204-2(a) thereunder [17 C.F.R. § 275.204-2(a)], and, unless enjoined, is reasonably likely to continue to do so. Thus, Chauncey Lufkin aided and abetted Lufkin Advisors' violation, in violation of Section 209(f) of the Advisers Act.

COUNT 12

(LUFKIN ADVISORS)

**Failure to Produce Required Books and Records of an Investment Adviser Firm
In Violation of Section 204(a) of the Advisers Act
[15 U.S.C. § 80b-4(a)]**

130. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 118 above, as if set forth fully here.

131. As detailed above, Lufkin Advisors failed to furnish to the Commission copies of books and records that Lufkin Advisors had to provide upon request. Lufkin Advisors failed to produce these records for "such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deemed necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 80b-4(a).

132. As a result, Defendant Lufkin Advisors has violated and, unless enjoined, will continue to violate Section 204(a) of the Advisers Act [15 U.S.C. § 80b-4(a)].

COUNT 13

(CHAUNCEY LUFKIN)

**Aiding and Abetting Lufkin Advisors' Violation
of Section 204(a) of the Advisers Act
[15 U.S.C. § 80b-9(f)]**

133. The Commission repeats and incorporates by reference the allegations in paragraphs 1 through 132 above, as if set forth fully here.

134. As detailed above, Lufkin Advisors failed to furnish to the Commission copies of books and records that Lufkin Advisors had to provide upon request. Thus, Lufkin Advisors violated Section 204(a) of the Advisers Act [15 U.S.C. § 80b-4(a)].

135. Chauncey Lufkin knowingly or recklessly aided, abetted, counseled, commanded, induced, or procured Lufkin Advisors' violation of Section 204(a) of the Advisers Act, and, unless enjoined, is reasonably likely to continue to do so. Thus, Chauncey Lufkin aided and abetted Lufkin Advisors' violation, in violation of Section 209(f) of the Advisers Act.

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

- A. Enter appropriate preliminary injunctions, including:
- i. imposing an asset freeze of all assets under management by Lufkin Advisors;
 - ii. directing Lufkin Advisors and Chauncey Lufkin to preserve any records related to the subject matter of the lawsuit that are in their possession, custody, or subject to their control;
 - iii. requiring them to produce discovery to the Commission on an expedited basis; and,
 - iv. ordering them to provide an accounting of all assets currently under management by Lufkin Advisors and all expenses charged to either Lufkin Advisors or the private funds it manages in the last 24 months.
- B. Enter permanent injunctions enjoining Lufkin Advisors from violating Sections

206(1), (2) and (4); 204(a); 204A, and 207 of the Advisers Act and Rules 204-2(a); 204A-1; 206(4)-2; 206(4)-7; and 206(4)-8 thereunder; and enjoining Chauncey Lufkin from violating Advisers Act Sections 206(1), (2), and (4); and 207, and Rule 206(4)-8 thereunder, and aiding and abetting Lufkin Advisors' violations of Advisers Act Sections 204(a) and 204A, and Rules 204-2(a); 204A-1; 206(4)-2; and 206(4)-7 thereunder;

C. Order Defendants to pay appropriate civil monetary penalties pursuant to Section 209(e) and (f) of the Advisers Act [15 U.S.C. § 80b-9(e) & (f)];

D. Require Defendants to disgorge their ill-gotten gains, pursuant to Sections 21(d)(5) and 21(d)(7) of the Securities Exchange Act of 1934, plus prejudgment interest;

E. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and,

F. Award any other relief that the Court deems just and proper.

Respectfully submitted,

By: /s/ Marc J. Jones
Marc J. Jones
Senior Trial Counsel
S. D. Fla. Special Bar No. A5503098
Direct Dial: (617) 573-8947
Email: jonesmarc@sec.gov

Alexandra B. Lavin
Counsel
S.D. Fla. Special Bar No. A5503099
Direct Dial: (617) 573-8951
Email: lavinal@sec.gov

Michele T. Perillo
Assistant Director
S.D. Fla. Special Bar No. A5503100
Direct Dial: (617) 573-5916
Email: perillom@sec.gov

Andrew R. Walsh
Counsel
S.D. Fla. Special Bar No. A5503101
Direct Dial: (617) 573-8813
Email: walshan@sec.gov

ATTORNEYS FOR PLAINTIFF
SECURITIES AND EXCHANGE COMMISSION
33 Arch St., 24th Floor
Boston, MA 02110
Telephone: (617) 573-8900

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