UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
vs.	**Case No. 1-15-cv-659-JMS-MJD**
TOBIN J. SENEFELD, ET AL.,	
Defendants,	

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Robert M. Moye (MoyeR@sec.gov)
Doressia L. Hutton (HuttonD@sec.gov)
U.S. SECURITIES AND EXCHANGE COMMISSION
175 West Jackson Blvd., Suite 1450
Chicago, IL 60604
(312) 353-7390
(312) 353-7398 (fax)

Attorneys for Plaintiff U.S. Securities and Exchange Commission

TABLE OF CONTENTS

I. PRELIMINARY INSTRUCTIONS

SEC's Proposed Preliminary Instruction No. 1
Order of Trial

The trial will proceed in the following manner:

First, the SEC's attorney may make an opening statement. Next, Mr. Senefeld may make an opening statement. An opening statement is not evidence but is simply a summary of what the evidence is expected to be.

After the opening statements, the SEC will call witnesses and present evidence. Then, Mr. Senefeld will have an opportunity to call witnesses and present evidence. After the parties' main cases are completed, the SEC may be permitted to present rebuttal evidence.

After the evidence has been presented, the SEC and Mr. Senefeld will make closing arguments, and I will instruct you on the law that applies to the case.

After that, you will go to the jury room to deliberate on your verdict.

Source: Federal Civil Jury Instructions of the Seventh Circuit, Sample Preliminary Instructions at 411-412 (2009 rev.)

SEC's Proposed Preliminary Instruction No. 2
Parties

As you know, the Plaintiff in this case is the Securities and Exchange Commission, which I will refer to as the SEC, and the Defendant in this case is Tobin Senefeld, who I will refer to as Mr. Senefeld. The SEC is an agency of the federal government and is charged with regulating the securities industry and enforcing the securities laws. Mr. Senefeld is a private citizen. All parties, whether government or individuals, are equal before the law and are entitled to the same fair consideration.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.03 (2017 rev.) (modified-modifications underlined); *U.S. v. Durham et al.*, 1-11-cr-42 (S.D. Ind.), Preliminary Instruction No. 5

SEC's Proposed Preliminary Instruction No. 3
Claims and Defenses

The positions of the parties can be summarized as follows:

The Plaintiff, which is the SEC, claims that Defendant Tobin Senefeld committed securities fraud, by engaging in a scheme to defraud investors that used money from investors in later in time investments to pay investors in earlier in time investments and that paid Mr. Senefeld and others "success fees" that were not disclosed to investors.

Mr. Senefeld denies those claims.

To prove its claim, the SEC will have to prove, by a preponderance of the evidence that Mr. Senefeld employed a fraudulent scheme or engaged in transactions, acts, or courses of business that operated as a fraud or deceit to investors.

What I have just given you is only a preliminary outline. At the end of the trial I will give you a final instruction on these matters. If there is any difference between what I just told you, and what I tell you in the instructions I give you at the end of the trial, the instructions given at the end of the trial govern.

Source: Federal Civil Jury Instructions of the Seventh Circuit, Sample Preliminary Instructions at 412 (2009 rev.) (*modified- additions are underlined*); Amended Complaint [Filing No. 57]

SEC's Proposed Preliminary Instruction No. 4
Burden of Proof

When I say a particular party must prove something by "a preponderance of the evidence," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true. To put it differently, if you were to put the SEC's and Mr. Senefeld's evidence on opposite sides of the scales, the SEC would have to make the scales tip somewhat on its side.

Source: Federal Civil Jury Instructions of the Seventh Circuit, Sample Preliminary Instructions at 412 (2009 rev.) (*modified – additions underlined*)

SEC's Proposed Preliminary Instruction No. 5
Province of Judge and Jury

Do not allow sympathy, prejudice, fear, or public opinion to influence you. ~~You should not be influenced by any person's race, color, religion, national ancestry, or sex.~~

Source: Federal Civil Jury Instructions of the Seventh Circuit, Sample Preliminary Instructions at 413 (2009 rev.) (*modified – deletions are struck through*)

SEC's Proposed Preliminary Instruction No. 6
Inferences

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

Source: Federal Civil Jury Instructions of the Seventh Circuit, Sample Preliminary Instructions at 414 (2009 rev.)

SEC's Proposed Preliminary Instruction No. 7
Rulings on Objections

From time to time during the trial I may be called upon to make rulings of law on objections or motions made by the lawyers.

When I "sustain" an objection, I am excluding that evidence from this trial for a good reason. When you hear that I have "overruled" an objection, I am permitting that evidence to be admitted.

When I say "admitted into evidence" or "received into evidence," I mean that this particular statement or the particular exhibit may be considered by you in making the decisions you must make at the end of the case.

You should not infer or conclude from any ruling or other comment I may make that I have any opinions about how you should decide this case. And if I should sustain an objection to a question that goes unanswered by a witness, you should not guess or speculate what the answer might have been, and you should not draw any inferences or conclusions from the question itself.

Source: Federal Civil Jury Instructions of the Seventh Circuit, Sample Preliminary Instructions at 415 (2009 rev.) (*modified - using U.S. v. Durham et al.*, 1-11-cr-42 (S.D. Ind.), Preliminary Instruction No. 6)

SEC's Proposed Preliminary Instruction No. 8
No Transcript Available to Jury

Pay close attention to the testimony as it is given. At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult.

Because you must pay attention to the testimony as it is given, you must not use any electronic device, such as a cell phone, PDA, or smart phone while you are seated in the jury box.

Source: Federal Civil Jury Instructions of the Seventh Circuit, Sample Preliminary Instructions at 416-417 (2009 rev.) (*modified* - additions are underlined and from *U.S. v. Durham et al.*, 1-11-cr-42 (S.D. Ind.), Preliminary Instruction No. 9)

II. INSTRUCTIONS DURING TRIAL

SEC's Proposed Instruction No. 9
Cautionary Instruction Before Recess

We are about to take our first break during the trial, and I want to remind you of the instruction I gave you earlier. Until the trial is over, you are not to discuss this case with anyone, including your fellow jurors, members of your family, people involved in the trial, or anyone else. If anyone approaches you and tries to talk to you about the case, do not tell your fellow jurors but advise me about it immediately. Do not read or listen to any news reports of the trial. Finally, remember to keep an open mind until all the evidence has been received and you have heard the views of your fellow jurors.

I may not repeat these things to you before every break that we take, but keep them in mind throughout the trial.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 2.01 (2017 rev.)

SEC's Proposed Instruction No. 10
In-Trial Instruction on News Coverage

I understand that reports about this trial are appearing in the newspapers and/or on radio and television and the internet. The reporters may not have heard all the testimony as you have, may be getting information from people whom you will not see here under oath and subject to cross examination, may emphasize an unimportant point, or may simply be wrong.

You must not read anything or listen to anything or watch anything with regard to this trial. It would be a violation of your oath as jurors to decide this case on anything other than the evidence presented at trial and your common sense. You must decide the case solely and exclusively on the evidence that will be received here in court.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 2.02 (2017 rev.)

SEC's Proposed Instruction No. 11
Judge's Comments to Lawyer

I have a duty to caution or warn an attorney who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I may caution or warn during the trial.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 2.14 (2017 rev.)

III. INSTRUCTIONS BEFORE DELIBERATIONS

SEC's Proposed Instruction No. 12
No Inference from Judge's Questions

During this trial, I have asked a witness a question myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.02 (2017 rev.)

SEC's Proposed Instruction No. 13
All Litigants Equal Before the Law

In this case, the Plaintiff in this case is the Securities and Exchange Commission, or the SEC, and the Defendant in this case is Tobin Senefeld. The SEC is an agency of the federal government and is charged with regulating the securities industry and enforcing the securities laws. Mr. Senefeld is a private citizen.

All parties are equal before the law and are entitled to the same fair consideration.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.03 (2017 rev.) (modification underlined); *U.S. v. Durham et al.*, 1-11-cr-42 (S.D. Ind.), Preliminary Instruction No. 5

SEC's Proposed Instruction No. 14
Consideration of All Evidence Regardless of Who Produced

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question, regardless of who introduced it.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.08 (2017 rev.)

SEC's Proposed Instruction No. 15
Limited Purpose of the Evidence

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which I admitted it. You must not consider it for any other purpose.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.09 (2017 rev.) (modified - addition underlined)

SEC's Proposed Instruction No. 16
Lawyer Interviewing Witness

It is proper for a lawyer to meet with any witness in preparation for trial.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.16 (2017 rev.)

SEC's Proposed Instruction No. 17
Absence of Evidence

The law does not require a party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require a party to present as exhibits all papers and things mentioned during this trial.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.18 (2017 rev.)

SEC's Proposed Instruction No. 18
Adverse Inference from Missing Witness

[Name] was mentioned at trial but did not testify. You may, but are not required to, assume that [Name's] testimony would have been unfavorable to [party].

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.19 (2017 rev.)

SEC's Proposed Instruction No. 19
Demonstrative Exhibits

Certain charts, graphs, timelines, and PowerPoint slides have been shown to you. These visual aids are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.24 (2017 rev.) (*modified – additions underlined)*

SEC's Proposed Instruction No. 20
Dismissed/Withdrawn Defendant

Matthew Haab, Jeffery Risinger, and Veros Partners, Inc. are no longer defendants in this case. You should not consider any claims against Matthew Haab, Jeffery Risinger, and Veros Partners, Inc. Do not speculate on the reasons. You should decide this case as to Tobin Senefeld.

Federal Civil Jury Instructions of the Seventh Circuit § 1.26 (2017 rev.) (*modified – additions underlined)*

SEC's Proposed Instruction No. 21
Burden of Proof

When I say a particular party must prove something by "a preponderance of the evidence," or when I use the expression "if you find," or "if you decide," this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

To put it differently, if you were to put the SEC's and Defendant Senefeld's evidence on opposite sides of the scales, the SEC would have to make the scales tip somewhat on its side. If the SEC fails to meet this burden, the verdict must be for Defendant Senefeld.

Those of you who have sat on criminal cases will have heard of proof beyond a reasonable doubt. That requirement does not apply to a civil case; therefore, you should put it out of your mind.

Source: Federal Civil Jury Instructions of the Seventh Circuit § 1.27 (2017 rev.) (*modified – additions underlined*; *Herman & MacLean v. Huddleston*, 459 U.S. 375, 388-91 (1983); *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 355 (1943); *SEC v. Pirate Investor LLC*, 580 F.3d 233, 239, 242 (4th Cir. 2009); *SEC v. Maxxon*, 465 F.3d 1174, 1179, n.9 (10th Cir. 2006); *SEC v. Jakubowski*, 912 F. Supp. 1073, 1079 (N.D. Ill. 1996) *aff'd by SEC v. Jakubowski*, 150 F.3d 675 (7th Cir. 1998)

SEC's Proposed Instruction No. 22
The SEC's Claims

The SEC has alleged that Mr. Senefeld violated sections 17(a)(1), (2), (3) of a federal statute known as the Securities Act of 1933. I will refer to this statute as the Securities Act.

The SEC has also alleged that Mr. Senefeld violated Section 10(b) of a federal statute known as the Securities Exchange Act of 1934. I will refer to this statute as the Exchange Act. The SEC has also alleged that Mr. Senefeld violated Rule 10b-5 under the Exchange Act.

Mr. Senefeld denies each of the SEC's claims.

The Securities Act and the Exchange Act were enacted to provide a comprehensive plan to protect the investing public in the purchase of securities. These two laws require full and fair disclosure of all important facts so that the investing public can make informed investment decisions.

When Congress enacted the Securities Act and the Exchange Act, it recognized that the purchase of securities is different from the purchase of a vegetable bought in a grocery store in that the average investor is not in a position to make a personal investigation to determine the worth, quality, and value of securities.

In passing the securities laws, Congress authorized the SEC to establish rules and regulations to protect investors. These rules include rules prohibiting certain conduct in the offering, purchase, and sale of securities. Rule 10b-5 has the effect of law and you should treat it as such.

Source: SEC's Amended Complaint at Counts I, II, and III [Filing No. 57]; adapted from Modern Federal Jury Instructions (Civil) ¶¶ 82.01 & 83.01, Instr. 82-2 & 83-2; *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)*; Securities & Exchange Com. v. Van Horn*, 371 F.2d 181 (7th Cir. 1981)

SEC's Proposed Instruction No. 23
Scheme Liability

An individual can be held liable if she/he is a substantial and necessary participant in a fraudulent scheme.

An individual can be held liable if she/he did not have direct contact with investors.

An individual can be held liable if she/he did not write the documents related to the investments.

You may consider all of the facts and conduct relating to the scheme. Liability is not limited to someone who reads or writes the documents.

Source: SEC v. Holschuh, 694 F.2d 130 (7th Cir. 1982); *See also Hoglund v. Covington County Bank*, (1977–1978 Transfer Binder] Fed.Sec.L.Rep. (CCH) ¶ 96,003 (M.D.Ala.1977) (The court was entitled to consider the lulling activities because they were evidence of a scheme which, viewed as a whole, was sufficiently closely connected to the sale and was relevant to the question of intent. We find no error.)

SEC's Proposed Instruction No. 24
Separate Violations at Issue

The SEC has alleged multiple claims. The SEC's claims are separate charges. You need not find that Mr. Senefeld committed all of the alleged violations in order to find that he committed one or more of the alleged violations. You should consider each violation independently.

Source: Adapted from Modern Federal Jury Instructions (Civil) ¶¶ 82.01 & 83.01, Instr. 82-2 & 83-2.

SEC's Proposed Instruction No. 25
Section 10(b) and Rule 10b-5 of the Exchange Act

In Count I, the SEC has asserted a claim under the Exchange Act. The Exchange Act is a federal statute that allows the SEC to enact rules and regulations prohibiting certain conduct in the purchase or sale of securities. The SEC is not required to prove that a particular defendant had contact with investors, that a particular defendant offered or sold securities, or that any investor actually purchased any securities because of defendant's fraudulent device, scheme, or artifice.

The SEC asserts that Mr. Senefeld violated Section 10(b) of the Exchange Act and Exchange Act Rules 10b-5(a) and 10b-5(c).

Section 10(b) and Rule 10b-5(a)

Rule 10b-5(a) makes it unlawful for anyone to employ any device, scheme, or artifice to defraud someone else in connection with the purchase or sale of any security. Fraud is a general term which covers efforts that individuals may devise to take advantage of others by deception. The phrase "a device, scheme, or artifice to defraud" encompasses a plan to achieve a fraudulent objective, including efforts to take advantage of others. Conduct may constitute "a device, scheme, or artifice to defraud" even if it is not fraudulent upon its face; the conduct need only be reasonably calculated to deceive persons of ordinary prudence and comprehension.

To prove a claim under Section 10(b) and Rule 10b-5(a), the SEC must prove the following by a preponderance of the evidence:

First, that Mr. Senefeld used, or caused to be used, an instrumentality of interstate commerce. "Instrumentality of interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, an interstate delivery system such as

Federal Express or UPS. It is not necessary that a misrepresentation or omission occur during the use of the instrumentality of interstate commerce. All that is required is that those methods be used by anyone in some phase of the purchase or sale.

Second, that Mr. Senefeld used a device, scheme, or artifice to defraud someone else in connection with the purchase or sale of any security.

Third, that Mr. Senefeld acted knowingly or with reckless disregard for the truth.

Section 10(b) and Rule 10b-5(c)

Rule 10b-5(c) makes it unlawful for a person to engage in any act, practices or course of dealing that would operate as a fraud in connection with the purchase or sale of any security. The phrase "engaged in any act, practice, or course of business that operated, or would operate, as a fraud or deceit upon any person" can encompass a single act or repeated conduct that could have succeeded in defrauding someone, even if the act or conduct ultimately did not succeed in defrauding someone.

To prove a claim under Section 10(b) and Rule 10b-5(c), the SEC must prove the following by a preponderance of the evidence:

First,

that Mr. Senefeld used, or caused to be used, an instrumentality of interstate commerce. "Instrumentality of interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, an interstate delivery system such as Federal Express or UPS. It is not necessary that a misrepresentation or omission occur during the use of the

instrumentality of interstate commerce. All that is required is that those methods be used by anyone in some phase of the purchase or sale.

Second, that Mr. Senefeld engaged in any act, practice, or course of business which operated or would operate as a fraud or deceit on any person in connection with the purchase or sale of any security.

Third, that Mr. Senefeld acted knowingly or with reckless disregard for the truth.

Second Element – Prohibited Conduct

Both Rule 10b-5(a) and Rule 10b-5(c)

For the second element, the SEC alleges that Mr. Senefeld violated both 10b-5(a) and 10b-5(c). It is not necessary that the SEC prove that Mr. Senefeld violated both provisions. The SEC may prove either that Mr. Senefeld used a device, scheme, or artifice to defraud someone else in connection with the purchase or sale of any security or that Mr. Senefeld engaged in any act, practice, or course of business which operated or would operate as a fraud or deceit on any person in connection with the purchase or sale of any security.

A security is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types are stocks, bonds, and investment contracts. The farm loan investments are securities.

The terms "sale" or "sell" mean the transfer of a security for value. This includes the contract for sale for value or any other disposition for value of a security or interest in a security.

An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

You must determine whether the deceptive act or conduct was "in connection with" the purchase or sale of securities. This element is satisfied if you find there was some connection or relationship between the deceptive act or conduct and the sale or purchase of securities. You need not find that a defendant actually participated in any securities transaction in order to find that the deceptive conduct was "in connection with" the purchase or sale of securities. Rather, it is enough that the defendant's conduct and the sale or purchase of securities coincide.

With respect to the alternative **second elements**, you may consider that the SEC has alleged that Mr. Senefeld's conduct satisfies those elements because he participated in a fraudulent scheme and that the fraudulent scheme involved, for example:

1. raising money from the investors in the 2013 Veros Farm Loan Holding Offering without disclosing to the investors that some of their money would be used to repay investors in the 2012 Crossroads and 2012 Kirbach Offerings;
2. raising money from the investors in the 2014 FarmGrowCap Offering without disclosing to the investors that some of their money would be used to repay investors in the 2013 Veros Farm Loan Holding Offering;
3. raising money from the investors without disclosing to them that certain farms had not paid back their previous year loans;
4. mischaracterizing in a Private Placement Memorandum Mr. Senefeld's previous settlement with the SEC;
5. Mr. Senefeld receiving hundreds of thousands of dollars in success fees or loan origination fees when it was not disclosed to the investors that their money would be used to pay the fees. These fees were paid up front from investor funds invested in the 2013 Veros Farm Loan Holding Offering and 2014 FarmGrowCap Offering; and

6. Mr. Senefeld directed at least one wire transfer that paid investors in a 2012 Offering with money from investors in the 2013 Veros Farm Loan Holding Offering.

Third Element – Scienter
Both Rule 10b-5(a) and Rule 10b-5(c)

For the **third** element for both Rule 10b-5(a) and Rule 10b-5(c), the SEC has to show that Mr. Senefeld acted knowingly or with reckless disregard for the truth.

To act knowingly means to act intentionally and deliberately, rather than mistakenly or inadvertently.

To act recklessly means to engage in conduct that is highly unreasonable and involves an extreme departure from the standards of ordinary care, to the extent the danger was either known to the defendant or was so obvious that the defendant must have been aware of it. Recklessness is more than negligence or a mistake. Reckless conduct represents highly unreasonable, rash or intemperate behavior.

The question of whether a person acted knowingly or recklessly is a question of fact for you to determine, like any other fact question. Direct proof of state of mind is almost never available, and is not required. Circumstantial evidence is of no less value than direct evidence.

With respect to the **third element**, in deciding whether Mr. Senefeld acted knowingly or with reckless disregard for the truth, you may consider that the SEC has alleged, for example, that:

1. Mr. Senefeld knew that he owned 1/3 of and helped create and manage PinCap and FarmGrowCap for the purpose of raising investor funds and managing the farm loans;
2. Mr. Senefeld knew or recklessly disregarded that certain farms had not paid their previous year loans;

3. Mr. Senefeld knew or recklessly disregarded that it was not disclosed to investors in later in time offerings that their funds would be used to repay investors in earlier offerings;
4. Mr. Senefeld knew or recklessly disregarded that he was paid hundreds of thousands of dollars in "success" or loan origination fees. These fees were paid up front from investor funds invested in the 2013 Veros Farm Loan Holding Offering and 2014 FarmGrowCap Offering;
5. Mr. Senefeld knew or recklessly disregarded that he directed at least one wire transfer that paid investors in a 2012 Offering with money from investors in the 2013 Veros Farm Loan Holding Offering; and
6. Mr. Senefeld knew or recklessly disregarded that his prior settlement with the SEC was mischaracterized in a Private Placement Memorandum that was provided to potential investors.

Source: 15 U.S.C. § 78j(b), 17 C.F.R. 240.10b-5; *Aaron v. SEC*, 446 U.S. 680, 696 n.13 (1980) (defining "device," "scheme," and "artifice"); *SEC v. Kimmes*, 799 F. Supp. 852, 858 (N.D. Ill. 1992); *SEC v. Van Horn*, 371 F.2d 181, 185-86 (7th Cir. 1966); *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *SEC v. Bauer*, 723 F.3d 758, 772 (7th Cir. 2013); *SEC v. Holschuh*, 694 F.2d 130 (7th Cir. 1982); *SEC v. Zandford*, 535 U.S. 813, 821-22 (2002) (the in connection with requirement must be read flexibly and broadly, and "[i]t is enough that the scheme to defraud and the sale of securities coincide"); *United States v. O'Hagen*, 521 U.S. 642, 656 (1997) (the in connection with requirement was met because "the securities transaction and the breach of duty . . . coincide[d];" Modern Federal Jury Instructions, Instr. 82-4; Instruction 82-8. *United States v. Prince*, 496 F.2d 1289, 1293 (5th Cir. 1974) (affirming Section 10(b) conviction and noting that "direct proof of the appellant's state of mind . . . is not required"); *United States v. LaPlante*, 714 F.3d 641, 644 (1st Cir. 2013) (affirming a jury charge in which the district court explained that "direct proof of intent . . . is not required; intent may be 'established by circumstantial evidence'").

SEC's Proposed Instruction No. 26
Section 17(a)(1) of the Securities Act and
Section 10(b) and Rule 10b-5 of the Exchange Act

The proscriptions contained in §10(b), Rule 10b–5, and §17(a) are substantially the same. The principal difference is that §10(b) and Rule 10b-5 apply to acts committed in connection with a *purchase or sale of* securities while §17(a) applies to acts committed in connection with an *offer or sale of* securities." *Id.* Therefore, if you found that Mr. Senefeld violated Section 10(b) and Rule 10b-5, then he also violated Section 17(a) of the Securities Act.

The instructions for Section 17(a)(1), Section 17(a)(2), and Section 17(a)(3) follow this instruction.

Source: SEC v. Maio, F.3d 623, 631 (7th Cir. 1995).

SEC's Proposed Instruction No. 27
Section 17(a)(1) of the Securities Act

In Count II, the SEC asserts a claim that Mr. Senefeld violated Section 17(a)(1) of the Securities Act.

The Securities Act is a federal statute prohibiting certain conduct in the offer or sale of securities. Section 17(a)(1) makes it unlawful for a person to employ any device, scheme, or artifice to defraud in connection with the offer to sell or sale of any security.

To find Mr. Senefeld liable under 17(a)(1) of the Securities Act, you must find the following:

First element, that an instrumentality of interstate commerce was used;

Second element, that Mr. Senefeld used a device, scheme, or artifice to defraud someone in connection with the offer to sell or sale of a security; and

Third element, that Mr. Senefeld acted knowingly or with reckless disregard for the truth .

Now I'll provide you with some additional instructions to help you as you consider the facts the SEC must prove by a preponderance of the evidence.

For the **first element**, "instrumentality of interstate commerce" means the use of the mails, telephone, Internet, or some other form of electronic communication, an interstate delivery system such as Federal Express or UPS. All that is required is that those methods be used by anyone in some phase of the purchase or sale.

For the **second element**, the SEC must prove that Mr. Senefeld engaged in a fraudulent scheme. A scheme to defraud is "merely a plan or means to obtain something of value by trick

or deceit." The SEC does not need to identify any particular offer to sell or sale of securities by a specific person including Mr. Senefeld.

A security is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types are stocks, bonds, and investment contracts. The farm loan investments are securities.

The terms "sale" or "sell" mean the transfer of a security for value. This includes the contract for sale for value or any other disposition for value of a security or interest in a security.

An "offer," "offer to sell," or "offer for sale" means attempting to dispose of a security or an interest in a security for value by inviting buyers.

For the second element, you may consider that the SEC has alleged that Mr. Senefeld participated in a fraudulent scheme and that the fraudulent scheme involved, for example:

1. raising money from the investors in the 2013 Veros Farm Loan Holding Offering without disclosing to the investors that some of their money would be used to repay investors in the 2012 Crossroads and 2012 Kirbach Offerings;
2. raising money from the investors in the 2014 FarmGrowCap Offering without disclosing to the investors that some of their money would be used to repay investors in the 2013 Veros Farm Loan Holding Offering;
3. raising money from the investors without disclosing to them that certain farms had not paid back their previous year loans;
4. mischaracterizing in a Private Placement Memorandum Mr. Senefeld's previous settlement with the SEC;
5. Mr. Senefeld receiving hundreds of thousands of dollars in success fees or loan origination fees when it was not disclosed to the investors that their money would be used

to pay the fees. These fees were paid up front from investor funds invested in the 2013 Veros Farm Loan Holding Offering and 2014 FarmGrowCap Offering; and

6. Mr. Senefeld directed at least one wire transfer that paid investors in a 2012 Offering with money from investors in the 2013 Veros Farm Loan Holding Offering.

For the **third element**, the SEC has to show that Mr. Senefeld acted knowingly or with reckless disregard for the truth. As previously stated, to act knowingly means to act intentionally and deliberately, rather than mistakenly or inadvertently.

To act recklessly means to engage in conduct that is highly unreasonable and involves an extreme departure from the standards of ordinary care, to the extent the danger was either known to the defendant or was so obvious that the defendant must have been aware of it. Recklessness is more than negligence or a mistake. Reckless conduct represents highly unreasonable, rash, or intemperate behavior.

The question of whether a person acted knowingly or recklessly is a question of fact for you to determine, like any other fact question. Direct proof of state of mind is almost never available and is not required. Circumstantial evidence is of no less value than direct evidence.

In deciding whether Mr. Senefeld acted knowingly or with reckless disregard for the truth, you may consider that the SEC has alleged, for example, that:

1. Mr. Senefeld knew that he owned 1/3 of and helped create and manage PinCap and FarmGrowCap for the purpose of raising investor funds and managing the farm loans;
2. Mr. Senefeld knew or recklessly disregarded that certain farms had not paid their previous year loans;

3. Mr. Senefeld knew or recklessly disregarded that it was not disclosed to investors in later in time offerings that their funds would be used to repay investors in earlier offerings;
4. Mr. Senefeld knew or recklessly disregarded that he was paid hundreds of thousands of dollars in "success" or loan origination fees. These fees were paid up front from investor funds invested in the 2013 Veros Farm Loan Holding Offering and 2014 FarmGrowCap Offering;
5. Mr. Senefeld knew or recklessly disregarded that he directed at least one wire transfer that paid investors in a 2012 Offering with money from investors in the 2013 Veros Farm Loan Holding Offering; and
6. Mr. Senefeld knew or recklessly disregarded that his prior settlement with the SEC was mischaracterized in a Private Placement Memorandum that was provided to potential investors.

Source: 15 U.S.C. § 78c(a)(10); *SEC v. Edwards*, 540 U.S. 389, 393 (2004) (*citing Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990)); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 299 (1946); *SEC v. Kimmes*, 799 F. Supp. 852, 858 (N.D. Ill. 1992); *SEC v. Lyttle*, 538 F.3d 601, 603 (7th Cir. 2008; *SEC v. Montana*, 464 F.Supp. 2d 772, 784 (S.D. Ind. 2006); Modern Federal Jury Instructions, Instruction 82-8. *United States v. Prince*, 496 F.2d 1289, 1293 (5th Cir. 1974) (affirming Section 10(b) conviction and noting that "direct proof of the appellant's state of mind . . . is not required"); *United States v. LaPlante*, 714 F.3d 641, 644 (1st Cir. 2013) (affirming a jury charge in which the district court explained that "direct proof of intent . . . is not required; intent may be 'established by circumstantial evidence'").

SEC's Proposed Instruction No. 28
Section 17(a)(2) and (3) of the Securities Act

In Count III, the SEC has asserted that Mr. Senefeld violated Section 17(a)(2) and (3). The SEC alleged that Mr. Senefeld violated two parts of Section 17(a). It is not necessary that the SEC prove that Mr. Senefeld violated both parts.

Section 17(a)(3) of the Securities Act

Section 17(a)(3) makes it unlawful for a person, in connection with the offer or sale of a security, to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

To find Mr. Senefeld liable under 17(a)(3) of the Securities Act, you must find the following:

First element, that an instrumentality of interstate commerce was used;

Second element, that Mr. Senefeld, in connection with the offer to sell or sale of a security, engaged in a transaction, practice, or course of business, that operated or would operate as a fraud or deceit upon the purchaser;

Third element, that Mr. Senefeld was negligent in engaging in the transaction, practice, or course of business. Negligence is a failure, whether conscious or even unavoidable, to come up to the specified standard of care.

The same definition of the terms "instrumentality of interstate commerce," "security," "sale," "sell," "offer," "offer to sell," or "offer for sale" that I previously gave you apply here.

The SEC does not need to identify any particular offer to sell or sale of securities by a specific person including Mr. Senefeld. Rather, it is enough if the SEC proves the transaction, practice, or course of business that Mr. Senefeld engaged in involved, or touched in any way, the offer to sell or sale of securities.

For the second element, in deciding whether Mr. Senefeld engaged in a transaction, practice, or course of business, that operated or would operate as a fraud or deceit upon the purchaser you may consider that the SEC has alleged that Mr. Senefeld's conduct satisfies this element because he participated in a fraudulent scheme and that the fraudulent scheme involved, for example:

1. raising money from the investors in the 2013 Veros Farm Loan Holding Offering without disclosing to the investors that some of their money would be used to repay investors in the 2012 Crossroads and 2012 Kirbach Offerings;
2. raising money from the investors in the 2014 FarmGrowCap Offering without disclosing to the investors that some of their money would be used to repay investors in the 2013 Veros Farm Loan Holding Offering;
3. raising money from the investors without disclosing to them that certain farms had not paid back their previous year loans;
4. mischaracterizing in a Private Placement Memorandum Mr. Senefeld's previous settlement with the SEC;
5. Mr. Senefeld receiving hundreds of thousands of dollars in success fees or loan origination fees when it was not disclosed to the investors that their money would be used to pay the fees. These fees were paid up front from investor funds invested in the 2013 Veros Farm Loan Holding Offering and 2014 FarmGrowCap Offering; and
6. Mr. Senefeld directed at least one wire transfer that paid investors in a 2012 Offering with money from investors in the 2013 Veros Farm Loan Holding Offering.

For the third element, negligence is a failure, whether conscious or even unavoidable, to come up to the specified standard of care. In deciding whether Mr. Senefeld was negligent, you may consider that the SEC has alleged, for example, that:

1. Mr. Senefeld was negligent in not making sure that it was disclosed to the investors that certain farms had not paid their previous year loans;
2. Mr. Senefeld was negligent in not making sure that it was disclosed to investors in later in time offerings that their funds would be used to repay investors in earlier offerings;
3. Mr. Senefeld was negligent in that he received hundreds of thousands of dollars in success fees or loan origination fees when it was not disclosed to the investors that their money would be used to pay the fees. These fees were paid up front from investor funds invested in the 2013 Veros Farm Loan Holding Offering and 2014 FarmGrowCap Offering;
4. Mr. Senefeld was negligent in directing at least one wire transfer that paid investors in a 2012 Offering with money from investors in the 2013 Veros Farm Loan Holding Offering;
5. Mr. Senefeld was negligent in allowing his prior settlement with the SEC to be mischaracterized in a Private Placement Memorandum that was provided to potential investors.

Section 17(a)(2) of the Securities Act

In Count III, the SEC also asserted a claim under Section 17(a)(2).

Section 17(a)(2) makes it unlawful for a person to obtain money or property using any untrue statement of a material fact or by omitting any material fact necessary to make statements,

in light of the circumstances under which they were made, not misleading in connection with the offer to sell or sale of a security.

To find Tobin Senefeld liable under 17(a)(3) of the Securities Act, you must find the following:

First element, that an instrumentality of interstate commerce was used;

Second element, that Mr. Senefeld directly or indirectly used one or more misrepresentations of material fact or omissions of material fact in the offer to sell or sale of a security; and

Third element, you must find that Mr. Senefeld was negligent.

The same definition of the terms "instrumentality of interstate commerce," "security," "sale," "sell," "offer," "offer to sell," or "offer for sale" that I previously gave you apply here.

For the **second element**, misstatements or omission are material if there is a substantial likelihood that they would have been viewed by the reasonable investors as having significantly altered the total mix of information available.

For the **second element**, in determining whether Mr. Senefeld directly or indirectly used one or more misrepresentations of material fact or omissions of material fact in the offer to sell or sale of a security you may consider that the SEC has alleged that Mr. Senefeld used misleading Private Placement Memorandums to obtain the "success" or loan origination fees that were not disclosed to investors. You may also consider that the SEC has also alleged that:

1. The 2013 and 2014 Private Placement Memorandums failed to disclose that funds from investors would be used to pay Mr. Senefeld "success" or origination fees.
2. The 2013 and 2014 Private Placement Memorandums failed to disclose that investor funds would be used to repay investors in earlier offerings

3. The 2013 and 2014 Private Placement Memorandums mischaracterized Senefeld's 1999 SEC settlement by representing that the conduct that gave rise to the case was by an employee under his supervision.

For the **third element**, negligence is a failure, whether conscious or even unavoidable, to come up to the specified standard of care. In deciding whether Mr. Senefeld was negligent, you may consider that the SEC has alleged that:

1. Mr. Senefeld was negligent because he did not make sure that it was disclosed to the investors that certain farms had not paid their previous year loans;
2. Mr. Senefeld was negligent because he did not make sure that it was disclosed to investors in later in time offerings that their funds would be used to repay investors in earlier offerings;
3. Mr. Senefeld was negligent in that he received hundreds of thousands of dollars in success fees or loan origination fees when it was not disclosed to the investors that their money would be used to pay the fees. These fees were paid up front from investor funds invested in the 2013 Veros Farm Loan Holding Offering and 2014 FarmGrowCap Offering;
4. Mr. Senefeld was negligent in directing at least one wire transfer that paid investors in a 2012 Offering with money from investors in the 2013 Veros Farm Loan Holding Offering;
5. Mr. Senefeld was negligent in allowing his prior settlement with the SEC to be mischaracterized in a Private Placement Memorandum that was provided to potential investors.

Source: SEC v. Kimmes, 799 F. Supp. 852, 858 (N.D. Ill. 1992); *SEC v. Van Horn*, 371 F.2d 181, 185-86 (7th Cir. 1966); *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *SEC v. Bauer*, 723 F.3d 758, 772 (7th Cir. 2013);*SEC v. Holschuh*, 694 F.2d 130 (7th Cir. 1982).

Dated: September 29, 2017

Respectfully submitted,

/s/*Robert M. Moye*_____
Robert M. Moye (MoyeR@sec.gov)
Doressia L. Hutton (HuttonD@sec.gov)
SECURITIES AND EXCHANGE COMMISSION
175 West Jackson Blvd., Suite 1450
Chicago, IL 60604
(312) 353-7390

Attorneys for Plaintiff, the United States Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2017, I served Defendant Tobin Senefeld with a copy of the foregoing Plaintiff's Proposed Jury Instructions, by email and U.S. Mail, and filed the same via CM/ECF, which will notify all counsel of record.

/s/Robert M. Moye_____
Robert M. Moye