

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF SOUTH CAROLINA**

In the matter of	)	
	)	
LPL FINANCIAL LLC,	)	Matter No. 15037
	)	
Respondent.	)	
_____	)	

**CONSENT ORDER**

WHEREAS, state regulators from multiple jurisdictions, led by Nevada, Maine and Texas, conducted a coordinated investigation of LPL Financial LLC (“LPL”) to determine whether non-traded REIT sales transactions executed by LPL, during the time period beginning January 1, 2008 through December 31, 2013, violated state law;

WHEREAS, the Securities Commission of the State of South Carolina (the “Securities Commission”) conducted a parallel investigation into non-traded REIT sales transactions executed by LPL during a similar time period, to evaluate compliance with the South Carolina Uniform Securities Act of 2005 (the “South Carolina Securities Act”);

WHEREAS, LPL has cooperated both with the state regulators conducting the coordinated investigation and with employees of the Securities Commission by responding to inquiries, providing documentary evidence, and identifying executed sales transactions (“Sales Transactions”) that were sold in violation of (a) the prospectus standards of the specific REIT, (b) a state concentration limit, or (c) LPL’s own guidelines for the sale of Alternative Investments, including but not limited to non-traded REITs;

WHEREAS, the investigations have identified Sales Transactions of non-traded REITs to investors in South Carolina, that were sold in excess of at least one of the above-stated prospectus standards, state concentration limits, or LPL’s own guidelines, which the Securities

Commission alleges constitutes a violation of its duty to establish and maintain adequate supervisory procedures reasonably designed to achieve compliance with state law;

WHEREAS, LPL has agreed to resolve both the global investigation as it relates to South Carolina and the Securities Commission's investigation through the offer of a settlement which is memorialized by this Consent Order;

WHEREAS, LPL, as part of this settlement, agrees to comply with all state and federal securities laws; and

WHEREAS, LPL, without admitting or denying the findings of fact and conclusions of law contained herein, voluntarily consents to the entry of this Consent Order, and waives any right to a hearing or to judicial review regarding this Consent Order.

NOW THEREFORE, the Securities Commissioner hereby enters this Consent Order.

#### **I. FINDINGS OF FACT**

1. LPL, CRD # 6413, is an entity currently registered as a broker-dealer firm in South Carolina. LPL is also an investment adviser registered with the Securities and Exchange Commission, and notice filed in South Carolina.

2. LPL's principal place of business is located at 75 State Street, 24<sup>th</sup> Floor, Boston, MA 02109. LPL currently maintains branch offices in South Carolina.

3. During the time period from and including January 1, 2008 through December 31, 2013, LPL offered multiple non-traded REITs through its branch offices in South Carolina.

4. Non-traded REITs are specifically identified by LPL as a form of "Alternative Investment."

5. Non-traded REITs generally carry significant investor risk in that they present liquidity risk and often have lengthy holding periods, restricted redemption options, and variable withdrawal periods determined by issuer specific programs.

### **Relevant Disciplinary History**

6. On February 6, 2013, LPL entered into a Consent Order with the Commonwealth of Massachusetts regarding certain sales of non-traded REITs to Massachusetts residents (“MA Order”) during the time period of January 1, 2006 through February 6, 2013.

7. Subsequent to the MA Order, LPL began a review of its Sales Transactions involving non-traded REITs to residents of jurisdictions other than Massachusetts, sold after October 1, 2010.

8. On January 28, 2014, LPL entered into an Acceptance, Waiver and Consent Agreement (“AWC”) with the Financial Industry Regulatory Authority (“FINRA”) which was accepted by FINRA on March 24, 2014. This FINRA AWC sets forth that LPL accepted and consented to findings, without admitting or denying the findings, that between January 1, 2008 and July 1, 2012, LPL violated NASD Rules 3010(a) and (b), 2110 and FINRA Rule 2010 by failing to implement an adequate supervisory system for the sale of alternative investments that was reasonably designed to achieve compliance with suitability requirements.

### **Identification of Sales Transactions that constitute a state law violation**

9. Subsequent to the above referenced Massachusetts action, LPL began a review of its Sale Transactions from October 2010 to August 2013 to identify those Sales Transactions that exceeded one or more of the following:

- a. the particular REIT’s prospectus standards;
- b. a state’s concentration limits (if applicable); or
- c. LPL’s Alternative Investment Guidelines.

10. Ultimately, LPL reviewed its Sales Transactions from January 1, 2008 through December 31, 2013 to identify those non-traded REIT Sales Transactions that exceeded one of the following:

- a. the particular REIT's prospectus standards;
- b. a state's concentration limits (if applicable); or
- c. LPL's Alternative Investment Guidelines.

11. During the time period from and including January 1, 2008 through December 31, 2013, LPL processed over 2,000 transactions in various jurisdictions that were sold in excess of the REIT's prospectus standards, various state concentration limits or LPL's Alternative Investment Guidelines.

12. LPL's internal review of its non-traded REIT Sales Transactions identified the date, amount of transaction, account number, product, client name, client age, state of residence at the time of the transaction, annual income, net worth, liquid net worth, total alternative investments, total non-traded REIT investments, and percentage of total alternative investments to the investor's liquid net worth.

13. Beginning in calendar year 2013, LPL began contacting certain states and identifying transactions that exceeded prospectus standards, state concentration limits or its own Alternative Investment Guidelines. South Carolina was not among the states contacted by LPL.

14. However, LPL responded in a timely manner to Securities Commission requests and LPL, further, agreed to cooperate both with the Securities Commission's and the multiple jurisdiction coordinated investigation from the beginning of the investigations. LPL provided extensive cooperation with the multiple jurisdiction investigation, including: (1) providing information about transactions irrespective of the jurisdiction in which transactions occurred; and (2) identifying Sales Transactions that exceeded state concentration limits, REIT prospectus standards, or LPL's Guidelines applicable to the sale of non-traded REITs.

## II. CONCLUSIONS OF LAW

15. At all times relevant, and pursuant to South Carolina law, LPL was required to implement an adequate supervisory system regarding the sale of non-traded REITs that was reasonably designed to achieve compliance with applicable securities laws and regulations, including applicable Financial Industry Regulatory Authority (“FINRA”) rules. Further, pursuant to applicable securities laws and regulations, including applicable FINRA rules, LPL was required to enforce its written procedures regarding the sale of non-traded REITs.

16. Based upon the above facts, from and including January 1, 2008 through December 31, 2013, LPL failed to implement an adequate supervisory system that was reasonably designed to achieve compliance with the South Carolina Securities Act regarding its sale, through South Carolina representatives, of non-traded REITs.

17. From and including January 1, 2008 through December 31, 2013, LPL failed to enforce its written procedures to supervise the activities of its registered representatives in violation of the South Carolina Securities Act.

18. As a result, this Consent Order and the following relief is appropriate and in the public interest.

## III. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and the consent of LPL to the entry of this Consent Order,

### **IT IS HEREBY ORDERED:**

1. LPL shall Cease and Desist from violation of the South Carolina Securities Act.

2. LPL shall offer to remediate<sup>1</sup> losses for all non-traded REITs sold by LPL to LPL clients, from and including January 1, 2008 through December 31, 2013, who were South Carolina residents at the time they purchased the non-traded REIT (regardless of whether the shares of the non-traded REIT are presently held in an LPL account or the individual or entity no longer resides in South Carolina) (“South Carolina Investors”) that exceeded any of the following:

- a. Those transactions made which exceeded or were inconsistent with a non-traded REIT prospectus-prescribed minimum net worth or annual income standard;
- b. Those transactions in which the principal invested amount exceeded LPL’s Alternative Investment Guidelines; or
- c. Those transactions which were processed inconsistent with LPL’s policies and procedures, including LPL’s Compliance Manual and Written Supervisory Procedures (a, b, and c referred to jointly as “South Carolina Investor Sales Transactions”).

3. LPL shall create a team of individuals who are primarily dedicated to assisting South Carolina Investors with LPL’s remediation of South Carolina Investor Sales Transactions (“Claim Team”). The Claim Team shall establish a dedicated phone number and be the central point of contact for any client or former client seeking information about a non-traded REIT Sales Transaction during the relevant time period, and for any South Carolina Investor making

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<sup>1</sup> The term “remediation” or “remediate” with respect to the offers contemplated herein shall be based on a methodology as agreed to by the representative designated by the North American Securities Administrators Association that takes into account, singularly or in any combination, the following:

- (i) non-traded REIT shares still held;
- (ii) previously sold or redeemed non-traded REIT shares;
- (iii) non-traded REITs that are now publicly traded themselves, or are now subsumed within a publicly traded security; and
- (iv) non-traded REITs that have had a special or extraordinary capital distribution.

any inquiry or claim, until such time as LPL delivers the Report required in paragraph 13 and the representative or representatives designated by the North American Securities Administrators Association (“NASAA”) (the “NASAA Representative”) confirms that the Claim Team is no longer necessary.

4. LPL or its designee shall send an offer of remediation to eligible South Carolina Investors with South Carolina Investor Sales Transactions (“Offer Letter”). Copies of the Offer Letters sent to eligible South Carolina Investors or, in the alternative, one copy of any master letter(s) sent to eligible South Carolina Investors and a listing or spreadsheet identifying the names, addresses, and all other information specific to the South Carolina Investor receiving each master letter, broken down by master letter, shall be sent to the Deputy Securities Commissioner for the State of South Carolina, Tracy Meyers, within 30 days after the independent third party releases its final report as described in paragraph 13 below.

The offer communicated in the Offer Letter shall remain open for ninety (90) days from the date of mailing. Within thirty (30) days of the mailing of the Offer Letter, LPL shall provide to South Carolina a list of all South Carolina Investors for whom LPL receives an offer as return to sender (“Undeliverable South Carolina Residents”). To the extent South Carolina has access to different mailing address information for Undeliverable South Carolina Investors, LPL agrees to mail a second Offer Letter to South Carolina Investors within 30 days of South Carolina providing such different address. South Carolina Investors who choose to accept the offer of remediation shall be required to sign a release in a form not unacceptable to the Deputy Securities Commissioner, who shall give great deference to the form found not unacceptable to the NASAA Representative, agreeing to waive any further claims against LPL or its agents relating to any violation set forth in this Consent Order, giving rise to the offer of remediation,

and agreeing to offset any additional claims relating to identified transactions by the amount received by this Consent Order. In addition, South Carolina Investors who choose to accept the offer of remediation must agree to tender their existing shares in the non-traded REIT giving rise to the offer of remediation to LPL or its designee, as a precondition to receipt of payment by LPL.<sup>2</sup> The offer of remediation shall be in the form of a credit to an existing LPL account or a check as elected by existing LPL clients or a check for former LPL clients.

5. All eligible South Carolina Investor Sales Transactions described above shall be given notice of and the opportunity to accept LPL's offer of remediation as set forth in the above paragraphs 2 and 4.

6. LPL shall provide to South Carolina the most recent contact information for each South Carolina Investor.

7. Within forty-five (45) days of the expiration of the offer communicated in the Offer Letter, LPL agrees to prepare, and submit to South Carolina, a report detailing the amount of funds reimbursed pursuant to this Consent Order, which shall include:

- a. Identification of all accepted offers; and
- b. Dates, amounts, and methods of the transfer of funds for all payments of remediation.

8. Within one hundred and eighty (180) days of the date of the Offer, LPL agrees to prepare, and submit to South Carolina and the NASAA Representative, a report detailing the amount of funds reimbursed pursuant to the Order, which shall include:

- a. Identification of all offers made;
- b. Identification of all accepted offers;

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<sup>2</sup> As pertaining to any investor who may have a physical certificate(s) of the identified non-traded REITs, LPL will provide these South Carolina Investors additional time (not unacceptable to the State) to locate all physical certificate(s).

- c. Identification of all claims made to LPL;
- d. Identification of any claim denied by LPL; and
- e. Dates, amounts, and methods of the transfer of funds for all payments of remediation.

9. In addition to making offers to eligible South Carolina investors as set forth above, LPL shall pay the Division's investigative and other costs associated with this investigation, as well as a reduced civil penalty which takes into consideration LPL's offer to remediate client losses resulting from its supervisory systems issues noted above, as well as LPL's cooperation in this matter. The total amount of the monies to be paid are eighty thousand dollars (\$80,000.00), which shall be paid within ten (10) business days of the entry of this Consent Order.

10. At the request of LPL, South Carolina may extend, for good cause shown, any of the procedural dates set forth above.

11. LPL agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any commercial insurance policy, with regard to the penalty amount that LPL shall pay pursuant to Paragraph 9 of this Order.

12. LPL and its designee agrees that it shall not claim, assert or apply for a tax deduction or tax credit with regard to any state, federal or local tax for the penalty amount that LPL shall pay pursuant to Paragraph 9 of this Order, unless otherwise required by law.

13. LPL shall retain an independent third party, not objectionable to the Deputy Securities Commissioner, who shall heavily defer to the NASAA Representative. The third party will be responsible for analyzing the electronic data set provided by LPL of Sales Transaction data representing the executed sales of non-traded REITs by LPL from and

including January 1, 2008 through December 31, 2013. The third party shall identify South Carolina Sales Transactions that (a) violated REIT prospectus standards, (b) violated LPL's own guidelines for the sale of Alternative Investments, or (c) which were processed in a manner inconsistent with LPL's policies and procedures, including LPL's Compliance Manual and Written Supervisory Procedures. The South Carolina Investor Sales Transactions identified by the third party shall be sent the Deputy Securities Commissioner no later than fifteen (15) days after the independent third party finalized the report. This provision and the use of an independent third party does not relieve LPL of its obligations under Paragraph 2 of this Order.

14. LPL shall cause its Internal Audit department to confirm that the data provided to the third party is the most complete data set available reflecting executed non-traded REIT Sales Transactions during the relevant period and shall provide a notice to the NASAA Representative within ten (10) days of the delivery of the data to the third party.

The Internal Audit department shall also review and confirm that LPL has made offers relating to the South Carolina Investors Sales Transactions consistent with this Order. A report by the Internal Audit department of its review and confirmation that LPL has made offers consistent with this Order shall be sent to the Deputy Securities Commissioner within ten (10) days of the completion of the Internal Audit department's report.

15. Upon issuance of this Consent Order, LPL shall provide a written report to the Deputy Securities Commissioner regarding: the supervisory system for the review of Alternative Investment transactions; the surveillance programs related to Alternative Investment transactions; and the systems for maintaining execution data related to Alternative Investments.

16. This Consent Order is not intended to subject LPL to disqualification under federal securities laws, rules or regulations thereunder, or the rules and regulations of any self-regulatory

agency, nor the laws, rules or regulations of the various states and U.S. Territories, including without limitation, any disqualification from relying upon the registration exemption or the safe harbor provisions. In addition, this Consent Order is not intended to be the basis for any such disqualifications.

Dated: March 30, 2016

ALAN WILSON

SECURITIES COMMISSIONER

By: Tracy A Meyers

TRACY A. MEYERS  
DEPUTY SECURITIES COMMISSIONER

**CONSENT TO ENTRY OF CONSENT ORDER**

LPL Financial LLC, by and through its authorized representative, by signing below, agrees to the entry of this Consent Order, and waives any right to a hearing or to judicial review.

LPL by and through its authorized representative states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

David Bergers (name) represents that he or she has been authorized to enter into this Consent Order on behalf of LPL Financial LLC.

LPL Financial LLC

By: David Bergers  
Title: General Counsel  
Date: 3/24/16